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# A COLLECTION

OF

# THE LAWS AND CANONS

OF THE

# CHURCH OF ENGLAND.

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# A COLLECTION

OF

# THE LAWS AND CANONS

OF THE

# CHURCH OF ENGLAND,

FROM ITS FIRST FOUNDATION TO THE CONQUEST, AND FROM THE CONQUEST TO THE REIGN OF KING HENRY VIII.

TRANSLATED INTO ENGLISH

WITH

EXPLANATORY NOTES.

*IN TWO VOLUMES.*

By JOHN JOHNSON, M.A.,

SOMETIME VICAR OF CRANBROOK, IN THE DIOCESE OF CANTERBURY.

*A NEW EDITION.*

VOL. II.

OXFORD:

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# EDITOR'S PREFACE.

In this, as in the former volume, much care has been taken to reprint faithfully the text of Johnson's translation of the canons, &c., and his notes upon them, all corrections and additions being made by marginal and foot notes within brackets. The corrections however of verbal errors, supplied from the addenda of the first edition, are not so marked. Johnson's notes are referred to, as in the first edition, by letters of the alphabet, and those of the editor by asterisks, &c.; the latter series of note marks are in both volumes frequently accompanied by an accent to shew how much of Johnson's translation is to be compared with the original quoted in the editor's note. The translations of the second volume are all from Latin documents, and they have been compared throughout with the Concilia of Wilkins as containing the best text of the originals, but other texts are sometimes quoted to shew how far particular parts of Johnson's translation are warranted by his own authorities.

The edition of Lyndwood's Provinciale, Oxon. 1679, frequently referred to in this volume, comprises three distinct works, of various degrees of authority.

The first of these is Lyndwood's Provinciale properly so called; it contains the provincial constitutions of fourteen

archbishops of Canterbury, from Stephen Langton to Henry Chichelcy, collected A.D. 1422—46, and digested in order of their subjects with large annotations, by William Lyndwood, Doctor of the Canon and Civil Laws, Official of the Court of Canterbury, Ambassador from King Henry the Fifth of England to the Courts of Spain and Portugal, Keeper of the Privy Seal, and afterwards Bishop of St. David's. This is the most authentic and valuable work upon Church law in England between the Conquest and the Reformation, and Johnson made full use of it both to illustrate the canons and also to correct the text of the less accurate copies of the constitutions contained in the second volume of Sir H. Spelman's Concilia.

The second work in the volume referred to is the Commentary of John Athon upon the Legatine Constitutions of Cardinal Otho, A.D. 1237, and those of Cardinal Othobon, A.D. 1268. John Athon, who was Doctor of the Canon and Civil Laws, and Canon of Lincoln, died A.D. 1351, and his work is therefore one of much value and authority*.

The third part of the volume contains the Provincial Constitutions in chronological order without the glosses of Lyndwood, but with the addition of many passages not to be found in the Provinciale properly so called. The degree of value belonging to this last portion is not easily determined, but it undoubtedly ranks below the other two portions as well as the text of Wilkins. It is referred to by Johnson as the "Oxford copy" or "Oxford edition," and by the present editor as Lynd. app.

* Pits and others who followed him, have erroneously made the date of John Athon A.D. 1290, and it was so stated in the editor's preface to vol. i. of this work, p. iv. For the full correction of the statement of Pits, see Johnson's Vade-Mecum, part i. p. 165, and John Athon's own words in Const. Othob., tit. 29, gl. *Quod habita possessione*, p. 129.

Many of the editor's notes in this second volume do not, as in the first, contain corrections of undoubted mistakes in reading or translation (see vol. i. Editor's Preface, p. vi.), but simply variations of the text of Wilkins from that of Lyndwood and J. Athon, translated by Johnson.

JOHN BARON.

*Queen's College,*
*August* 30, *A.D.* 1851.

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ABBREVIATIONS.

Lynd., Lyndwood's Provinciale.
A. *or* J. A., John Athon's Commentary upon the Legatine Constitutions of the Cardinals Otho and Othobon.
Lynd. app., the Provincial Constitutions, &c., arranged in the order of time, appended to the above works.
} ed. Oxon. 1679.

A

# COLLECTION

Of all the

*Ecclesiastical Laws, Canons, Answers,* or *Rescripts,*

With other MEMORIALS concerning the Government, Discipline and Worship of the

Church of *England,*

From its first Foundation to the CONQUEST, that have hitherto been publish'd in the *Latin* and *Saxonic* Tongues:

And of all the

Canons and Constitutions Ecclesiastical, made since the CONQUEST, and before the REFORMATION, in any National Council, or in the Provincial Synods of

*Canterbury* and *York,*

That have hitherto been published in the *Latin* Tongue.

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Now first Translated into *English,* with Explanatory NOTES, and such Glosses from *Lyndwood* and *Athone,* as were thought most useful.

PART the Second.

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By JOHN JOHNSON, M.A. Vicar of *Cranbrook* in the Diocese of *Canterbury.*

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*LONDON:*

Printed for ROBERT KNAPLOCK in St. *Paul's* Church-yard, and SAMUEL BALLARD, in *Little-Britain.* MDCCXX.

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23. The constitutions of Edmund, archbishop of Canterbury. From Sir H. Spelman, vol. ii. p. 199*, and the Oxford copy, p. 11, and Lyndwood where his text is entire. With a preface by the translator.

* [This reference is inadvertently omitted in the margin of p. 129.]

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* [This reference should have been inserted in brackets in the margin of p. 182 ]

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A.D. MCCCXXXII.

37. Supposed constitutions of Simon Mepham, archbishop of Canterbury. From Sir H. Spelman, vol. ii. p. 500.

A.D. MCCCXXXVI.

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* [Compare below, p. 333, note *, and Const. Simonis Mepham, Cant. Arch., Sir H. Spelman, vol. ii. p. 498; Johnson follows Lynd. app., p. 39, in attributing to Archbishop Reynold all the constitutions which he gives A.D. 1322.]

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* [See below, p. 137, note *, and p. 440, note *.]

A.D. MCCCLXXVIII.

47. The constitutions provincial of Simon Sudbury, archbishop of Canterbury, made in the monastery of SS. Peter and Paul, Gloucester. From the Oxford copy, p. 58, and from Lyndwood where his text is entire *.

A.D. MCCCXCI.

48. The constitution of William Courtney, archbishop of Canterbury, against Choppe-Churches. From Sir H. Spelman, vol. ii. p. 641. With a preface by the translator.

A.D. MCCCXCVIII.

49. A constitution made in honour of Thomas Becket, (while Archbishop Arundel was archbishop of Canterbury, but in banishment,) by Roger Walden. From the Oxford copy, p. 62. With a preface by the translator.

A.D. MCCCCVIII.

50. The constitutions of Thomas Arundel, archbishop of Canterbury, against the Lollards, made in a provincial convocation at Oxford. From Sir H. Spelman, vol. ii. p. 662, and from the Oxford copy, p. 64, and from Lyndwood where his text is entire.

A.D. MCCCCXV.

51. The constitutions of Henry Chichley, archbishop of Canterbury, made in a provincial constitution. From Sir H. Spelman, vol. ii. p. 669, &c., and from the Oxford copy, p. 68, &c., and from Lyndwood where his text is entire.

A.D. MCCCCXVI.

52. The constitutions of Henry Chichley, archbishop of Canterbury, in a provincial convocation at St. Paul's, London. Here Lyndwood leaves us. From Sir H. Spelman, vol. ii. p. 672. With a preface by the translator.

A.D. MCCCCXXX.

53. The constitution of Henry Chichley, archbishop of Canterbury, against the "Auncel" weight, made in a provincial convocation at St. Paul's, London. From Sir H. Spelman, vol. ii. p. 687.

* [A part of these constitutions is also in Spelman, vol. ii. p. 626, as noted in margin of p. 442. Compare below, p. 443, note a, and p. 444, note *.]

A.D. MCCCCXXXIV.

54. The general sentences of excommunication decreed in a provincial convocation at St. Paul's, London, by Henry Chichley, archbishop of Canterbury. From the Oxford copy, p. 73.

A.D. MCCCCXXXIX.

55. The constitution of Henry Chichley, archbishop of Canterbury, made in a provincial convocation for augmenting poor vicarages. From the Oxford copy, p. 74 *.

A.D. MCCCCXLIV.

[Ed.] [56. The constitutions of John Kemp, archbishop of York. From Sir H. Spelman, vol. ii. p. 707.]

A.D. MCCCCXLV.

[Ed.] [57. The constitution of John Stafford, archbishop of Canterbury, for solemnly celebrating the feast of St. Edward, king and confessor. From the "Oxford edition," p. 74 †.]

A.D. MCCCCXLVI.

58. Pope Eugene's present of a golden rose to King Henry the Sixth of England. From Sir H. Spelman, vol. ii. p. 690.

A.D. MCCCCLIV.

59. Archbishop Bourchier's letters for processions. From Sir H. Spelman, vol. ii. p. 691. With a preface and postscript by the translator.

A.D. MCCCCLXIII.‡

60. The constitutions of Thomas Bourchier, archbishop of Canterbury, in a provincial convocation at St. Paul's, London. From Sir H. Spelman, vol. ii. p. 698.

* [Also in Spelman, vol. ii. p. 689, as noted below in margin, p. 498.]

† [These two items in the list of contents are supplied by the editor as having been omitted by Johnson, apparently through inadvertence, (see below, pp. 501, 505;) and the numbers before the remaining items have been altered accordingly.]

‡ [For a notice of a convocation A.D. 1462, see below, p. 513.]

A.D. MCCCCLXVI.

61. The constitutions of George Nevil, archbishop of York, made at a provincial synod held in the metropolitical church of York. From Sir H. Spelman, vol. ii. p. 699.

A.D. MCCCCLXXXVI.

62. The constitution of John Morton, archbishop of Canterbury, in a provincial convocation at St. Paul's, London, for enjoining masses and other devotions in behalf of deceased bishops. From Sir H. Spelman, vol. ii. p. 712.

A.D. MDXIX.

63. Pope Leo's rescript to William Warham, archbishop of Canterbury, concerning the Vigil of St. John Baptist. From Sir H. Spelman, vol. ii. p. 727. With a preface by the translator.

## CORRIGENDA.

P. 16. l. 31, *after* age *add* ]
— 17. l. 4. *before* On that year, *insert* [, and in marg. *after* * *add* ]
— 37. l. 3, *for* Thomas *read* Thurstan, *as directed in Johnson's Index under Thurstan.*
— 42. l. 28, *after* inserted, *add* ]
— 80. note *, *for* belemedan *read* belepeðan.
— 93. l. 8, *add* 15. *before* Let not monks
— 405. *transpose* notes * † and their marks.
— 442. l. 16, *for* 1632 *read* 1362.
— 463. l. 8. (const. 3), *dele* any thing, *as directed in Addenda of first edition.*

## A.D. MLXX.

### Preface to Lanfranc's Canons at Winchester.

It has been affirmed by some of late years, that William duke of Normandy did not conquer England, after all our ancestors for five centuries had yielded themselves to him and his successors as a conquered people; all, I mean, except the men of Kent, who, by the invention of one of their monks, did for many ages enjoy the honour of being unconquered. But in the last age, an antiquary of our own, and the greatest that our country or perhaps any other had then produced, I mean Mr. Somner, divested us too of this glory, by detecting the fiction of Spot, the monk*; and yet now it is become a fashionable opinion, that William the First was so far from conquering Kent, that he conquered no part of England. My reader will not expect that I should determine whether he conquered the civil state or nation, for this might perhaps be construed to my prejudice, as if I were a meddler in politics.

But whether he made a conquest of the nation or not, it is certain he conquered the bishops and clergy, and treated them as his captives; he destroyed many of their churches, he stripped most or all of them of their rich furniture; he laid a taxation of men and arms to serve him in his expeditions upon the lands of the bishops and prelates, and obliged them to secular services unknown to their predecessors; he caused many churches with their tithes to be converted into lay fees for the maintaining his military officers and men of arms; the tithes of other churches which were served mostly by English priests, he caused to be appropriated to abbeys, which were governed, if not filled with Normans. He caused Stigand, archbishop of Canterbury, to be deposed in a synodical form: the crimes alleged against him were, first, holding the see of Winchester together with that of Canterbury; and it was indeed reasonable that he should have

* [Spot (wrongly printed by Johnson Sprot) on the abbots of St. Augustine at Canterbury, cited from MS. by Lambard, Archaionomia, Glossarium, ad verb. gavelkind, p. 222, ed. Wheloc. 1644: refuted in Somner's treatise on Gavelkind, pp. 62—71. ed. 1660.]

[Ed.] parted with one of them, but not [been] turned out of both; secondly, that he wore the pall of his predecessor Robert; this was done only till the pope sent him a new one, and one would have thought that this had purged away all former offences. Thirdly, but Stigand received his pall from an intruder under the name of Benedict the Xth. This might have been deemed a crime, if there had been any other pope at that time. If he had had his pall from Alexander who now filled the chair at Rome, (as no doubt he gladly would if that had been sufficient,) yet he must no longer have been archbishop, because Lanfranc the Norman abbot had occasion for his see. And for the same reason, Agelmar, bishop of the East Angles, with several abbots, were turned out to make room for the Normans. This was done at Winchester, Low Sunday, A.D. 1070. On Whitsunday the same year, Agelric, bishop of South Saxons, was deprived in a synod at Windsor and committed to prison in Marlburgh, without any crime urged against him, and at the same time some abbots were deprived*. It does not appear that they suffered for any crime but that they were Englishmen. Some are said to have been deposed, without any synod or secular council, by the arbitrary will of the king.

* [Eodem anno concilium magnum in octauis Paschæ Wintoniæ celebratum est, jubente et præsente rege Willielmo, domino Alexandro papa consentiente, et per suos legatos Hermenfredum Sedunensem Episcopum, et presbyteros Johannem, et Petrum Cardinales, sedis apostolicæ suam authoritatem exhibente. In quo concilio Stigandus Doroberniæ Archiepiscopus degradatur tribus de causis: scilicet quod episcopatum Wintoniæ cum Archiepiscopatu injuste possidebat, et quod vivente Roberto Archiepiscopo non solum Archiepiscopatum sumpsit, sed etiam ejus pallio, quod Cantuariæ remansit, dum vi et injuste ab Anglia pulsus est, in Missarum celebratione aliquamdiu usus est, et a Benedicto, quem sancta Romana Ecclesia excommunicavit, eo quod pecuniis sedem apostolicam invasit, pallium accepit... Die autem pentecostes, rex apud Windeshoram venerando Baiocensi canonico Thomæ Eboracensis Ecclesiæ Archiepiscopatum, et Valcelino capellano suo Wintoniensis Ecclesiæ præsulatum dedit. Cujus jussu mox in crastino prædictus Sedunensis Episcopus Armenfredus synodum tenuit, Johanne et Petro Cardinalibus præfatis Romam reversis. In qua synodo Agelricus Suthsaxonum pontifex non canonice degradabatur; quem rex sine culpa mox apud Mearlesberge in custodiam posuit: abbates et quamplures sunt depositi, quibus depositis, rex suis capellanis, Arfracto, orientalium Anglorum præsulatum; et Stigando Suthsaxonum dedit episcopatum, nonnullis et Normannicis monachis abbatias dedit, et quia Dorobernensis archipræsul depositus est, et Eboracensis erat defunctus, jussu regis in octauis pentecostes ab eodem Armenfredo Sedunensi Episcopo sedis Apostolicæ legato ordinatus est Walcelinus. R. Hoveden, Annal. A.D. 1070, p. 452—4, ed. Savile 1601. Most of the historical facts in the above paragraph and that which follows it are taken from the same source, whence they are quoted, Spelman, vol. ii. p. 3; Wilkins, vol. i. p. 322.]

But it deserves our particular reflection, that Pope Alexander the Second was a principal agent in all these wicked doings. The duke of Normandy came over into England under the umbrage of a banner consecrated by him: he was forward to support the Conqueror's title, that the Conqueror might support and advance his interest here in England. Three of his legates, Hermenfride, bishop of Syon, John and Peter, priest cardinals, [were] now present at the deposition [Ed.] of Stigand and Agelmar; the first of them only at the deposition of Agelric.

By these means other bishops were terrified into a desertion of their sees; Robert of Lincoln fled into Scotland, Egelwin of Durham chose a voluntary banishment, but pronounced an excommunication against all invaders of churches and church goods*. The rest were tamed to such a degree, that they knew no other use of that little authority that was left them, but to execute the royal will and pleasure upon the small remainder of their disaffected brethren, who had too much English blood in their veins to be easy under such a foreign yoke. Only Wulstan, bishop of Worcester, durst face the Conqueror and his minions.

Of the first remarkable archiepiscopal acts performed by Lanfranc, was the assembling of a synod at London, or rather Westminster, where this Wulstan had a sentence of deprivation passed upon him for want of learning. When he saw that he must be stripped of his episcopal habit, he said to the king there present, I owe these to a better man than thee, to him I will restore them; and thereupon goes to the tomb of King Edward the Confessor, by whose means he was advanced to the see of Worcester, where he disrobed himself, and struck his pastoral staff so deep into the stone of the monument, that the strongest arm could not pull it out, if you will believe the legend†. It is certain he continued in his see, and this was miracle enough in conscience, all things considered. His sanctity was most probably his protection. Nothing but the sense of his own integrity could give him so much courage (when the rest of his

* [Matth. Paris, A.D. 1070, who is quoted, Spelman, vol. ii. p. 4.]

† [Spelman, vol. ii. p. 4; "Ex Polyd. Verg. Hist., lib. ix. p. 158:" Wilkins, vol. i. p. 367: cf. Ailred Abb. Riev. X. Script. p. 487.]

English brethren either sneaked or ran away) as to demand the restitution of the lands belonging to his see, of the Conqueror in the synod where Stigand was deprived. Aldred, late archbishop of York, had had several predecessors who held the see of Worcester together with that of York: this caused a confusion and uncertainty in the estates belonging to the two sees, and gave Aldred a reason or pretence to claim and enjoy some of the lands, which in truth belonged to Worcester; but by the death of Aldred, all these lands were come into the custody of the king, as guardian of the temporalties; of him, therefore, Wulstan made his demand, and it seems he made good his claim, and recovered his right next year at the council of Pendred*, when the chair of York was now filled with Thomas the Norman, as all the other vacant dignities now were with men of the same blood.

I ought not wholly to omit the struggle between these two Norman archbishops concerning the primacy. It was at last declared in a synod of fourteen bishops and eleven abbots, with consent of the king, queen, and pope, that York must be subject to Canterbury in all things relating to religion, and obey his summons to a synod; that the province of York should contain all Britain from Humber to the extremity of Scotland, [and] all the rest to be the province of Canterbury; that the archbishop of York should, with the rest of the bishops of that church, go to Canterbury to consecrate him that was elected to that see, and the elect of York, after having received the archbishopric as a gift from the king, should receive his consecration at Canterbury, or wherever that archbishop should require his attendance; that the archbishop of York should swear obedience to him

* [Deinde Lanfrancus Thomam Eboracensem consecravit episcopum. Quo consecrato, reverendi Wlstani Wigornensis episcopi mota est iterum querela; et in Concilio in loco qui vocatur Pedreda celebrato coram rege et Doroberniæ archiepiscopo, et primatibus totius Angliæ, Dei gratia amminiculante est terminata. Cunctis siquidem machinamentis non veritate stipatis, quibus Thomas ejusque fautores Wigornensem ecclesiam deprimere, et Eboracensi ecclesiæ subicere, ancillamque facere modis omnibus satagebant, justo Dei judicio attritis, ac scriptis evidentissimis penitus adnichilatis, non solum vir Dei Wlstanus proclamatas, et expetitas possessiones recepit, sed et suam ecclesiam Deo adjuvante, et rege concedente, ea libertate liberam suscepit, qua fundatores ejus rex Aluredus, Edwardus senior, Athelstanus, Edmundus, Eadredus et Eadgarus ipsam liberaverant. Radulf de Diceto, X. Script. p. 483. Compare Spelman, vol. ii. p. 4; Wilkins, vol. i. p. 324.]

of Canterbury upon his consecration; though Lanfranc contented himself with Thomas's subscription*. Upon Anselm's consecration at Canterbury, Thomas objected against the church of Canterbury's being styled metropolitan of all Britain: for then says he, York is no metropolis: his objection was allowed†, Thomas, successor of the present Thomas of York, refused to swear subjection to Canterbury till the peremptory command of King Henry I. forced his compliance‡.

Sir H. Spelman, vol. ii. p. 11, 12, mentions three councils in the year 1076, and the canons of the first of these you will find inserted at that year: but the other two must have been holden, I conceive, some years before; especially because the rates of penance are subjoined to these councils in two old books from which Sir H. Spelman transcribed them, and those rates are said to have been confirmed by Hermenfride the pope's legate. For it is notorious that he came hither in the beginning of the year 1070, and summoned a council to be holden at Winchester on the third day after Easter the same year, in which Archbishop Stigand and others were deposed, and in which I suppose the first set of canons were made. The next council holden at Winchester was that mentioned by the Latin continuator of the Saxon chronicle, who says that Lanfranc in his second year held a general council at Winchester, in which many things relating to the Christian worship were enjoined; and this very well agrees with the titles of those sixteen canons, which I have therefore placed in the year 1071, though it is possible the council might not be holden before the next year; a great part of which falls in with the second of Lanfranc: and he must have returned back from Rome, whither he went in his second year, before he could keep this council. I put the rates of penance immediately after the titles of the canons then made, for they could not be sooner decreed by the

* [Spelman, vol. ii. p. 5, 6. Wilkins, vol. i. p. 324-5, "ex MS. Cott. Domit. A. 5. fol. 13. et regist. Arundel. i. vol. fol. 13, 14. et MS. Cant. eccl. A. 5, 6." Cf. Will. Malm. De gest. Pont., lib. i. p. 206-7.]

† [Spelman, vol. ii. p. 15, 16; Wilkins, vol. i. p. 370, "ex Matth. Paris. in anno MXCIII. et Eadm. Hist. Nov., p. 21."]

‡ [Spelman, vol. ii. p. 30; Wilkins, vol. i. p. 390-1, "ex Eadmer. Hist. Nov., lib. iv. p. 102. seq."]

Normans, that is Lanfranc, and the new bishops; but for distinction's sake I date them 1072. It seems probable that Hermenfride left them with those of the bishops in which he had the greatest confidence, and they in this council resolved to execute them. Upon the whole it is evident, that the Conqueror never intended wholly to suppress ecclesiastical synods; though Stigand durst not call any, as knowing himself obnoxious. But when the Conqueror by the pope's help had eased himself of the old English prelates, the new Norman prelates knew their right to ecclesiastical synods, and frequently made use of them.

## A.D. MLXX.

THE HEADS OF A COUNCIL CELEBRATED AT WINCHESTER.

LATIN. Sir H. Spelman, vol. i. p. 12*. [Wilkins, vol. i. p. 365.]

1. CONCERNING the coming in of bishops and abbots by simoniacal heresy.

2. Of ordaining men promiscuously, and by means of money†.

3. Of the life and conversation of such men.

4. That bishops should celebrate councils twice a year.

5. That bishops ordain archdeacons, and other ministers of the sacred order, in their own churches.

6. That bishops have free power in their dioceses both over the clergy and laity.

[Addenda.] [One may wonder to see such a canon as this made by an archbishop who was witness and approver of the exemption granted by King William to the abbey of Battle, which seems to have been the first precedent of this sort; and from which the popes quickly copied, and thereby not only raised great sums of money, but created to themselves great bodies of men immediately subject to the see of Rome, and independent on any other power, either secular or ecclesiastical. (For exempt monks and friars were so esteemed in the following ages.) If Lanfranc had obstructed this innovation, he had acted consistently with himself in making this canon, and shewed the world that he had not muzzled himself by accepting the archbishopric. For certainly these exemptions were one of the most flagrant invasions of episcopal authority, and one of the great scandals of popery (as they were afterwards improved by the see of Rome) and not removed by our Reformation. Yet it is probable this exemption of Battle abbey had been dropped in King Henry the Second's reign, if Thomas Becket had not supported it. The bishop of Chichester had brought the abbot to make profession of obedience to him, and when the abbot came (as the practice then was) to have his charter renewed soon after the king's accession, Bishop Hilary opposed it as to the

* ["E libro Saxonico Wigorniensis Ecclesiæ; etiamque e libro Excestrensis Ecclesiæ."—Wilkins who here follows Spelman gives the above and next two sets of canons under A.D. 1076, but quotes the latter part of Johnson's preface in a note. See Wilkins, vol. i. p. 366, note.]

† [2. De ordinationibus passim factis, et per pretium. S. W.]

point of exemption; and so far prevailed, that the renewal of it was deferred from time to time. But Becket being now chancellor, did so effectually oppose the bishop as to frustrate all his endeavours; so that it may truly be said, no man that ever wore a mitre in England did more injury to episcopacy than Becket.]

7. That bishops and priests invite laymen to penance.

8. Of apostatizing clerks and monks.

9. That bishops have their sees ascertained, and that none conspire against the prince.

10. That laymen pay tithes, as it is written.

11. That none invade the goods of the Church.

12. That no clerk bear secular arms.

13. That clerks and monks be duly reverenced. Let him that does otherwise be anathema.

## A.D. MLXXI.

### LANFRANC'S CANONS AT WINCHESTER.

HEADS OF A COUNCIL CELEBRATED AT WINCHESTER*.

LATIN. 1. THAT no one be allowed to preside in two bishoprics.

2. That no one be ordained by means of simoniacal heresy.

3. That foreign clergymen be not received without commendatory letters.

4. That ordinations be performed at the certain seasons.

5. Of altars, that they be of stone.

6. That the sacrifice be not of beer, or water alone, but of wine mixed with water only.

7. Of baptism, that it be celebrated at Easter and Whitsuntide only, except there be danger of death.

8. That masses be not celebrated in churches, before they have been consecrated by bishops.

* [These heads of a council at Winchester, as also the next set of canons, are extant in (X.) MS. Bodl. Jun. 121 f. 2 b, to f 4 a. Johnson's translation has been compared with this copy as well as with Spelman and Wilkins.]

9. That the corpses of the dead be not buried in churches.

10. That the bells be not tolled at celebrating in the time of the [a] secret*.

[a] The *Secretum Missæ* is the canon of the mass going before the elevation. Not that there was yet any such ceremony as that of the solemn elevation used in order to the worshipping of the host; but the bells were rung as soon as the consecration was finished, in order to excite the people to prayers, as William archbishop of Paris teacheth us in his fourteenth canon†, and the consecrated host was shewed to the people at the same time; this was at the beginning of the thirteenth century; the worshipping of it came in soon after. It is great pity that we have not these and the foregoing canons at large, they would probably have given us considerable light into the practices of a very dark age.

11. That bishops only give penance for gross crimes‡.

12. That monks who have thrown off their habit be neither admitted into the army nor into any convent of clerks, but be esteemed excommunicate.

13. That every bishop celebrate a synod once a year§.

14. That tithes be paid by all.

15. That clergymen either live chastely, or desist from their office.

16. That chalices be not of wax or wood¶.

* [10. Quod tintinnabula non pulsentur, quando missa celebratur tempore secreti. S. W. The only variation of MS. X. is 'secrete,' as if the ellipse were orationis. Perhaps this head of a canon may be illustrated by the following: "Sonantibus omnibus signis chorum introeant, eisque cessantibus missam incipiant." Constitutiones Lanfranci, A.D. 1072; Wilkins, vol. i. p. 342. These last-named constitutions, printed by Wilkins from MS. Dunelm. B. iv. 24, fill forty-one folio pages, and give much information respecting the use of bells and the arrangement of services at the time: they are not in Spelman, and must have been unknown to Johnson.]

† [Additiones Willelmi Parisiensis Episcopi ad Constitutiones Gallonis Card. A.D. 1208. can. xv. Concilia, tom. xxii. col. 768.]

‡ [11. Quod de criminibus soli episcopi pœnitentiam tribuant. X. S. W.]

§ [13. Quod quisque episcopus omni anno synodum celebret. X. S. W.]

¶ [vel lignei, *omitted in* X.]

## A.D. MLXXII.

### SOLDIERS' PENANCE.

LATIN. THIS is the institution of penance according to the decrees of the Norman prelates (confirmed by authority of the chief pontiff, by his legate Hermenfride bishop of Syon) to be imposed upon those men [b] whom William duke of the Normans commanded to be in arms, and upon those who were in arms without his command and did of right owe him military service *.

[b] Here I follow Mr. Somner's emendations: Sir H. Spelman's copy is corrupted.

[Addenda.] [Somner thus corrects the Latin, viz., *quos Willielmus Normannorum dux suo jussu armavit, et qui absque jussu suo erant armati et ex debito, &c.*]

1. [c] Let him who knows he killed a man in the great battle do penance one year for every one, according to the number [slain by him].

[c] It is strange that they who allow the lawfulness of war, and of killing men in battle, should yet enjoin penance to men for doing their duty as soldiers: yet this is what all the ancient penitentiaries do. The canons *ad remedia peccatorum*, which are the most ancient of the English, enjoin but forty days' penance for killing a man in battle. Can. 3†.

2. For every one that he struck, if he do not know that he died of the blow, if he remember the number, forty days for every single man, either all at once, or by intervals.

3. If he know not the number of men whom he has slain, or struck, let him do penance one day in every week, at the discretion of the bishop, as long as he lives; or if he be able, let him redeem it with perpetual alms, by building or endowing a church.

* [Wilkins follows Somner's emendation as given in Johnson's note from the Addenda. The reading of MS. X., which seems to be the authority quoted in Spelman's margin, is as follows: quos W. Normannorum dux suo jussu, et qui ante hc̃ jussu sui erant, et ex debito ei militiam debebant.]

† [Spelman, Conc., vol. i. p. 283.]

4. Let him that intended to strike any one, though he did it not, do three days' penance.

5. As for those of the clergy who fought, or armed themselves to fight, because fighting is forbidden them according to the canonical institutes, let them [d]repent as if they had sinned in their own country. Let the penances of the monks be stated according to their own rule, and the judgments of the abbots.

[d] The clergyman's penance for murder was perpetual imprisonment; or at least living close in a monastery, on hard fare; but much was left to the discretion of the bishop.

6. Let them who fought through hopes of reward only, know that they ought to do penance [e]as for murder.

[e] The common penance for wilful murder was seven or ten years: yet by the old canon last mentioned it was but four years for killing a layman, seven years for killing a clergyman. This last case was now reserved to the pope, who acted at discretion.

7. But the bishops have appointed three years of penance to them who fought in the public war [f]for the discharge of their amerciaments*.

[f] *Pro misericordiâ. Lat.*

8. As for the archers, who have ignorantly killed, or wounded any without killing of them, let them do penance for three Lents.

9. Whoever from the beginning of this battle†, before the king's consecration, have run up and down the kingdom to get victuals, [and] have killed any of their enemies who made resistance, let them do a year's penance for every one whom they killed.

10. But let them who have run up and down not for want of victuals, but to get plunder, and have killed any, do three years' penance.

* ['Pro misericordia' rather means 'for mercy,' that is, as a compassionate mitigation of the full penance. This and the foregoing sentence are clearly connected, and in MS. X. stand thus: Qui autem tantum præmio adducti pugnaverunt cognoscant se sicut pro homicidio pœnitere debere. Sed quia in publico bello pugnaverunt pro misericordia tres annos pœnitentiæ eis episcopi statuerunt. Bodl. MS. Jun. 121 f. 3 b.]

† [excepto hoc prœlio, S. W. Rather, 'this battle excepted.']

11. But let him who hath killed a man since the consecration of the king do penance as for wilful murder: saving that if any one killed or struck a man that was yet resisting the king, let him do penance as above.

12. Let a man do penance for all manner of adulteries, rapes, and fornications, as if he had sinned in his own country.

13. As to the violation of churches, as also things which they have taken away from churches, let them, if possible, restore them to that [church] from which they took them; if that cannot be, to some other church. But if they refuse to restore them, the bishops have ordained that neither they do sell them nor others buy them.

## A.D. MLXXV.

### LANFRANC'S CANONS AT LONDON.

LATIN. Sir H. Spelman, vol. ii. p. 7. Ex MS. Wigorn. Ecclesiæ. [Wilkins, vol. i. p. 363*.]

IN the reign of William the glorious king of the English, the ninth year, was assembled in the church of the blessed Apostle Paul, London, a council of the whole English nation, viz., of bishops, abbots, and many persons of religious order, Lanfranc the arch-prelate of the holy church of Canterbury, primate of the whole isle of Britain, calling and presiding in the same; the venerable men Thomas, archbishop of York, William, bishop of London, [g]Goisfrid of Constance, (who, though a foreign bishop, yet having much land in England sat in council with the rest,) Walkelin of Winchester, Herman of Shirburn, Wulstan of Worcester, Walter of Hereford, [h]Giso of Wells, Remigius of Dorchester, or Lincoln, Herfast of Helmam, or Norwich, Stigand of Seolsey: Osburn of Excester, Peter of Lichfield: Rochester church then wanted a pastor: the bishop of Lindisfarn, or Durham, could not be present in council, having a canonical excuse.

* ["Ex vetusto registro Wigorn. eccles. collat. cum MS. Cantuar. eccles. A. vii. 6." See also in William of Malmesbury de gestis Pont. Angl., lib. i. p. 212. Rer. Angl. Scriptt. post Bedam Franc. 1601.]

[g] Alias Gauffrid. This preface was written by a later hand, after all the village bishops were translated to cities.

[h] This bishop was born in Lorrain, and was a great favourite of William the Conqueror, as well as Edward the Confessor: for he too was fond of foreigners.

Many things were renewed, which are known to have been defined by old canons, because councils had been disused in the kingdom of England for many years past.

It was ordained according to the council of [i]Milevis, Brague, and the fourth of Toledo, that bishops should take place according to the time of their ordination, unless their sees had the privilege of precedence by ancient custom. The seniors being asked what they had seen, or heard from others as to this point, had time given them till next day to make answer, as they did, viz., that the archbishop of York ought to sit at the right hand of him at Canterbury, he of London on the left, Winchester next to York; but if York were absent, then London at the right hand, Winchester at the left of Canterbury.

[i] See can. Mil. 13*. can. Bracar. (A.D. 563.) 6†. can. Tolet. (A.D. 633.) 6‡.

2. 'That monks observe their order according to the rule of Benedict, and the dialogue of Gregory, [k][that the young [monks] be kept under masters in proper places appointed for this purpose; that all of them carry lights by night, unless such as are not allowed by their prelates to have any thing of their own§.] If any without licence are discovered to have any thing of their own and do not with repentance confess, and discard it before they die, let not the bells be tolled, nor the salutary sacrifice be offered for such an one, nor is he to be buried in the churchyard.

[k] Malmesbury's copy, and that of the public library at Cambridge, instead of the words in [ ] have only these following, viz., "that monks nothing of their own."

* [Concil. Milev. A.D. 416. can. 13. Concilia, tom. iv. p. 330.]

† [Ibid., tom. ix. p. 778.]

‡ [Concil. Toled. IV. can. iv.; ibid., tom. x. p. 617.]

'§ [Ex regula beati Benedicti dialogo Gregorii, et antiqua regularium locorum consuetudine, ut monachi ordinem debitum teneant; infantes præcipue et juvenes in omnibus locis deputatis sibi idoneis magistris custodiam habeant; nocte luminaria ferant generaliter omnes, nisi a prælatis concessa proprietate careant. W.]

3. [l]According to the decrees of [m]Pope Damasus and Leo, and the councils of Sardica and [n]Laodicea*, it is granted by royal favour and the authority of synod to three bishops, to remove from villages to cities, that is, Herman from Shirburn to Salisbury, Stigand from Seolsey to Chichester, and Peter from Lichfield to Chester. The case of[o] some, who are yet in villages, is deferred till the king return from foreign parts.

[l] The third, fourth, and fifth canons are wanting in the Cambridge copy.

[m] The decrees of Damasus are forgeries. See Dec. 49 of Leo†, can. 6. of Sardica‡.

[n] Can. 57§ of Laodicea forbids chore-episcopi, but this of Lanfranc is meant of the principal bishop.

[o] That is Kirton, Dorchester, and Helmam, which were afterwards removed to Excester, Lincoln, and Norwich. Pol. Vergil adds that Wells was removed to Bath¶: and he places this council 1078. But there is little regard to be had to him, especially in point of chronology.

4. That no one ordain or receive a clergyman or monk that belongs not to him, according to many papal decrees and sacred canons.

5. To restrain the insolence of some indiscreet men, it was unanimously ordained that none but bishops and abbots speak in council without licence of the metropolitan.

6. That no one marry any of his own kindred, or of the kindred of a deceased wife, or the widow of a deceased kinsman within the seventh degree, according to the decree of Gregory the [p]Great and the Less.

[p] Gregory the Great allowed marriage in any degree beyond the fourth, as appears by his prescript to Augustin of Canterbury. Burchard and Gratian have palmed a decree upon him, which seems to countenance Lanfranc here; but the late editors of the Corp. Jur. Can. do clearly enough own the error, caus. 35. quæst. 2, 3. c. 16. p. 431, ed. Paris. 1695. It is true a decree to the same effect is cited from Gregory the Great, quæst.

* [Johnson *omits* in quibus prohibetur episcopales sedes in villis existere. S. W.]

† [Leonis I. Decr. c. 49. ap. Cod. Canonum Vetus Eccl. Rom. p. 484. Paris. 1609. Ex Epist. ad Episc. Africanos, § 10. Concilia, tom. v. col. 1257.]

‡ [A.D. 347, Concil. tom. iii. p. 9.]

§ [A.D. 320, Ibid., tom. iv. p. 573.]

¶ [Polyd. Verg. Angl. Hist., lib. ix. p. 158. Basil. 1557.]

ead. c. 2. p. 431. But it is said to be cited by the council of Meaux, A.D. 600 ; whereas there is no good proof of any such council at Meaux before the ninth century, and it is therefore of no authority at all to prove any such decree of Gregory the Great. The very next canon to this in the Corp. Jur. Can. allows those in the fifth degree to marry, and forbids those in the fourth to be separated if they are married, which the editors attribute to Theodore of Canterbury, and which was the doctrine of Gregory the Great, though Gratian cites it as a decree of Pope Fabian.

7. That no one buy or sell orders, or any ecclesiastical office, wherein the cure of souls is concerned[q]. For Peter forbad this to Simon, and it is forbidden by the holy fathers, under pain of excommunication. [Acts viii. 20.]

[q] The foregoing words of this canon are not in Malmesbury, and the following canon in him wants the first clause.

8. That the bones of dead animals be not hung up to drive away the pestilence from cattle, and that sorcery, sooth-sayings, divinations, and such-like works of the devil be not practised; for the holy canons forbid this under pain of excommunication.

9. That no bishop, abbot, or clergyman sit as judge in a cause of life or member, or by his authority countenance them that do, according to the council of [r]Eliberis and [s]Toledo the eleventh. Fourteen archbishops and bishops subscribe, twenty-one abbots, but Anschitill, archdeacon of Canterbury, before the abbots.

[r] By can. 56. Elib.* the Duumvir was forbid to come to church during that year that he bore this office. I find nothing else to the purpose in those canons.

[s] See the sixth canon of the council of Toledo, A.D. 638†. Our old English bishops made no conscience of sitting in the secular courts before the Conquest: but then it must be owned life or limb seldom was in dispute. A weregild, mulct, or a severe jerking was the usual infliction; though after the Danes got the rule other corporal punishments were in use.

[There is in the library of St. John's College, Cambridge, a MS. copy of this council, with this title, [a council of King William and Archbishop Lanfranc at London, concerning the primacy of the church of Canterbury, and the rules of the churches,] yet there could be no dispute about the primacy here. For Lanfranc called the council, and presided in it, the archbishop of York sitting at his right hand. In Sir H. Spelman's [Addenda.]

* [Concil., tom. ii. p. 15.]
† [Rather the first canon of the eleventh council of Toledo, A.D. 675. Concilia, tom. xi. fol. 137.]

third copy, p. 10, 11, there is indeed a postscript after a brief recital of the subscriptions, to this effect; "That in those times it was shewed and proved by divers authorities, that the church of York ought to be subject to that of Canterbury, and to obey the directions of the archbishop thereof, as primate of all Britain, in all things that concern the Christian religion. And they asserted the subjection of the bishop of Durham to the government of the church of York, the bounds of which [government] were from the river Humber to the farthest part of Scotland."

There are thirty-five differences in the spellings, points, and words, between the first copy of Sir H. Spelman (which I translate) and that of St. John's, but none that affect the sense so as to oblige me to alter my translation. The names of the subscribers, and of their sees, &c., are the same in St. John's MS. and Sir H. Spelman's print, though differently wrote; particularly the [w] in Sir H. Spelman's is for the most part [uu] in St. John's. I am persuaded that the series of the subscriptions in the MS. from which Sir H. Spelman published his copy, was the same with that in the other copy; that is to say, that they consisted of three columns, as they do in St. John's MS., viz., In the first column on the left hand stand the two archbishops and the twelve bishops, with Anschitill the archdeacon at the foot of it. In the second column stand the twelve first abbots, viz., Scollandus * (as it is there written) abbot of St. Austin's, parallel to Lanfranc the archbishop, and so on, till you come to Osirich de Horton, the twelfth abbot, whose name stands parallel to that of Stigand the twelfth bishop. But Osbern of Excester, Peter of Chester, and Anschitill the archdeacon, stand singly in the same column with the bishops without any names parallel to them in the other column. The nine remaining abbots must therefore stand in a third column. Sir H. Spelman's page was not large enough to represent the subscriptions in three columns as they stood in the MS., therefore he places all in one row; and so Anschitill the archdeacon stands before all the abbots in his edition, which probably the abbots would never have endured in that age.

* [Scotlandus S. W. The Canterbury MS. (see above, p. 12 *) has only the first two subscriptions, and Wilkins gives the whole list as Spelman. Compare Spelm., vol. ii. p. 8, 9, and Wilkins, vol. i. p. 364, note ‡.]

## A.D. MLXXVI.

### LANFRANC'S CANONS AT WINCHESTER.

LATIN. Sir H. Spelman, vol. ii. p. 13. [Wilkins, vol. i. p. 367 *. [Addenda.]

LANFRANC, archbishop of Canterbury, assembled another council at Winchester, Indict. 14, the most glorious William reigning in Britain, Lanfranc presiding at Canterbury†, Thomas at York; on that year I say a council was held at Winchester, on the kalends of April, by the same primate of the church of Canterbury; and therein was the cause of Aylric[a] our brother, formerly bishop of Chichester, determined, and brought to a final issue: and therein it was also decreed, &c.

[a] Aylric, or Egelric, is the same name with Agelric. The legate deposed him, and the Conqueror, we have heard, had by force thrust him from his see into a gaol at Marlburgh, but without crime. And now things being brought to a sort of a settlement, he applied to the archbishop in synod for his enlargement. For by the old laws of England, which the Conqueror pretended to observe, ecclesiastics were to be tried by bishops only. (See MLXIV. 5, &c.) And this bishop was very famous for his knowledge in the laws and constitution of England: insomuch that he was brought in a waggon (quadriga) to Pinnenden-Heath in Kent, to assist at the determining of a great cause there, tried between Odo bishop of Bayeux, (who was also the king's brother, and earl of Kent,) and Lanfranc the archbishop in 1074. It was probably by Aylric's means that Lanfranc recovered his lands then in dispute. (For it does not appear, that there was then any such distinct rank of men as those now called lawyers.) And at the same time the archbishop recovered some secular privileges, as that neither king nor earl could claim any thing in the archbishop's lands, excepting that if the archbishop's men digged a ditch, or felled a tree in the king's highway; or that murder or bloodshed was committed, and the party taken in the fact; the satisfaction was to the king; if he were not taken in the fact, the satisfaction belonged to the archbishop. Farther, it was adjudged that the archbishop had satisfaction due to him for murder committed even on the king's and earl's land, from such time as they cease to sing alleluia, (that is, I conceive, from Septuagesima,) till low-Sunday; and also half the cẏlðpiꝛe or satisfaction for a child unlawfully begotten. Lambard calls this the correction of adultery and fornication, and says, the bishops

* ["Ex M. Parker Antiq. Brit. eccl. ed. London, p. 173." Archbishop Parker notes his authority in the margin thus; "Ex lib. constitutionum ecclesiæ Wigorn., p. 101." The same canons are also extant in Bodl. MS. Jun. 121. f. 4, and are there expressly dated A.D. 1076, as in Parker.]

† [Johnson *omits* totius Britannie primate, X. Parker, S. W.]

had not yet gotten it wholly into their hands, because the king had half the forfeiture; whereas in truth this child-wite was a mere secular right, and part of the archbishop's royalty. The correction of the offender for his soul's health was a distinct thing, and had ever been the right of every bishop within his own diocese.

Aylric, who had carried the cause for the archbishop, could not fail of pleading his own cause effectually, when he came to a fair hearing. His bishopric indeed (which was that of Seolsey, now Chichester) was irrecoverably gone, by royal will and pleasure of the Conqueror; but even his successor Stigand, who now sat as one of his judges, could do no less than vote him his liberty. The good man could not long survive this; for Eadmer, in his life of Dunstan*, (where he speaks of the other with respect,) says, that he was almost contemporary to that archbishop, who had been now dead 88 years.]

1. That no canon have a wife; that such priests as live in castles and villages be not forced to dismiss wives, if they have them; but such as have not are forbidden to have any. And for the future, let bishops take care to ordain no man priest or deacon, unless he first profess that he hath no wife.

[Addenda.] [An oath of chastity was in this age imposed on all that entered into the superior orders, as Sir H. Spelman proves by a letter written by Gerard, archbishop of York, to Anselm, afterwards archbishop of Canterbury, in which are words to this effect, "when I call on any to enter into [the superior] orders, they oppose it with a stiff neck, that they may not upon their ordination profess chastity†." He justly supposes that the oath was now the same with that mentioned by me in 740 MS. Preface: yet it is clear from this canon, and from can. 4. 1102, that this oath had not been universally taken of late years.]

2. That no clergyman or monk be received without his bishop's letters: and if a monk be canonically received, yet let him not publicly serve in the churches.

3. It is decreed that no clergyman, either in the city or country, pay any[b] service for his ecclesiastical benefice, but what he paid in the time of King Edward.

[b] This is to be understood of secular service, viz., finding men or arms for the wars, paying any rent in coin, money, or work to the lord, either mean or sovereign. For not only the king himself, but his great men did all they could to humble the poor English clergy: yet Lanfranc and the Norman bishops seem to condemn this: but to very little purpose.

4. If laymen are accused of any crime, and will not obey

* [Eadmeri Vit. S. Dunst. prolog. p. 211.] apud Wharton. Angl. Sacr., tom. ii.

† [Spelman, vol. ii. p. 23.]

the bishop, let them be summoned three several times; if upon the third summons they are never the better, let them be excommunicated. If after their being excommunicate they come to make satisfaction, let them pay their [c]forfeiture to the bishop for every summons.

[c] This forfeiture is thus expressed in the Latin, *forisfacturam, quæ Anglice vocatur* Oferhyrness *seu* Cahslyte. Oꝼeꝼhẏꝼneꝼꝼ is the old Saxon word for disobedience or contumacy. [The forfeiture for contumacy to the bishop, according to law 35 of Henry I., was 20 marks*.] I have never elsewhere met with the other word; but it seems to me to signify a contempt of the keys, that is, of ecclesiastical authority: as Lahꝼlite signifies a mulct for the contempt of the common law; *quasi* Laȝa-ꝼlite; so cahꝼlite was a forfeiture for the contempt of the keys; *quasi* Læȝa-ꝼlite†. (Somner here reads Lahslite.) And since those Norman bishops had the name from the old English Saxons, we may safely conclude they had the thing too: I mean, that they cited men before them by a pure ecclesiastical authority, and might lay mulcts on them that were guilty of contumacy, and that therefore they had courts distinct from the secular. See King William's rescript following next after these canons. [Addenda.]

5. Farther, it is ordained that no man give his daughter or kinswoman in marriage without the priest's benediction: other marriage shall be deemed fornication.

6. We forbid all [d]supplantation of churches.

[d] William the Conqueror and his minions endeavoured to strip churches and monasteries of their estates by enquiring into the titles by which they held them: the clergy and monks were destitute of written deeds and charters, whereby to give such evidence of their right as the Normans demanded: in some cases the old English Saxons conveyed their lands by instruments in writing; yet for the most part estates were given by word of mouth, and by delivering a sword, a staff, or the like: but for want of charters they lost a great share of their endowments: this is what the synod here calls a supplantation of churches. And there is reason to believe that the third canon and this made little impression upon the consciences of the Normans. Ingulphus was made abbot of Croyland this very year, and was the king's great favourite, though of English extract; yet he found occasion to forge a set of charters, whereby to secure the lands of his abbey from these harpies: for the monks made no conscience of supplanting the supplanters, and this was the cause of so many false deeds and charters as are every where to be found in the repositories of the antiquarians.

* [Overseunesse . . . episcopi X. mañc. T.]

† [Cahslite in Spelman is probably a mere mistake, because he here quotes not from a manuscript, but from Antiq. Brit. Eccl. impr. Hanoviæ, 1605, p. 114, where the word is lahslite, as in the other edition, London, 1729: no help is afforded in this place by MS. X., which reads "forisfacturam suam quæ Anglice vocatur ouesævvenesse seu laxelit." For the meaning of oferhyrnesse see vol. i. pp. 340-1, note ‡.]

## A.D. MLXXXV.

### [a] KING WILLIAM THE FIRST'S MANDATE FOR SEPARATING THE ECCLESIASTICAL COURT FROM THE HUNDRED COURT.

LATIN. Sir H. Spelman, vol. ii. p. 14. [Wilkins, vol. i. p. 368 *.]

WILLIAM, by the grace of God king of the English, to R. Bainard, G. of Magneville, and Peter of Valoins, and all my liege men of Essex, Hertfordshire and Middlesex, greeting.

[a] This is without date, as very many ancient instruments of the greatest importance were. Sir H. Spelman, justly I think, places it about A.D. 1085. The Norman bishops prevailed on the king to make this great alteration in the constitution, by which the spiritualty was more untacked than the temporalty; and it was very agreeable to the temper of the Church of Rome, which always declared against clergymen's meddling with secular judicatures †. But they are greatly mistaken who think that the bishops and prelates got any thing by this separation. For they ever had their distinct judicatures for merely spiritual matters, and it is greatly to be lamented that they ever assumed to themselves the cognizance of any civil matters in their own courts. However it will appear that this separation occasioned great disputes, (see articles of Clarendon). The old English bishops were probably neither disposed nor encouraged to sit in temporal courts with the then Norman lords: the Norman bishops declined it, as contrary to their scheme of government; so that the judicatures might be separated in fact long before this law was made.

Know ye, and all my liege men in England, that I have determined that the episcopal laws be mended (as having not been right according to the tenor of the canons, even to my time, in the realm of the English) by a common council, and by a council of my archbishops, bishops, abbots, and principal men of my kingdom: wherefore I command and charge you by royal authority, that no bishop nor archdeacon do hereafter hold plea in the hundred, according to the laws

* ["Ex cod. MS. penes dec. et capit eccl. cathed. S. Pauli London. A. fol. 1. a. collat. cum registro Lincoln. Remigius, fol. 9."]

† ["950. 5. See ad A.D. 1064 in Addend. note a, and 1076. 4." MS. note Wrangham.]

episcopal, nor bring those causes before the secular judicature, which concern the regimen of souls. But whoever is impleaded by the laws episcopal, for any causes or crime, let him come to the place which the bishop shall choose and name for this purpose, and there make answer concerning his cause and crime; and that not according to the [b]hundred, but according to the canons and the laws episcopal, and let him do right to God and the bishop. But if any one being lifted up with pride, refuse to come to the bishop's court, let him be summoned three several times; and if by this means he be not brought to obedience, let application be made to the power and court of the king or sheriff; and he who upon summons refuses to come to the episcopal court shall make [c]satisfaction for every summons, according to the laws episcopal. This also I absolutely forbid, that any sheriff, provost, minister of the king*, do any ways concern himself with the laws which belong to the bishop, or bring another man to [d]judgment any where but in the bishop's court. And let judgment be no where undergone but in the bishop's see, or in that place which he appoints for this purpose.

[b] Hundred here signifies not only the lesser court kept in every district that had ten tithings, but every common law court, that of the county not excepted: for that was but a collection of many hundreds, and every lesser court consisted of one or more of these hundreds; for they were not confined to any certain number.

[c] Here the king expressly owns a satisfaction due to the bishop for not appearing at his summons before the making of this partition of judicatures; therefore there can be no reasonable doubt, but that the bishop exercised a separate jurisdiction in foregoing times. But he sat in the county court too, and he or his archdeacon in every lesser hundred court. For there he was sure to meet such offenders (if they were to be found) as would not appear without force. And farther, it was his duty to assist the alderman or sheriff in dispensing civil justice.

[d] By judgment here I understand ordeal.

[I have not taken into this collection the laws ecclesiastical of King Henry I., partly because they were too bulky, and so interwoven with the temporal laws as not easily to be separated; but especially because in the main they contain very little besides repetitions of the Saxonic laws, which I have already given my reader in the former volume. [Addenda.]

The English in these and the foregoing reigns desired, and even de-

* [Johnson *omits* nec aliquis laicus homo. S. W.]

manded to be governed by the laws of King Edward the Confessor; and the laws of this king were no other than the Saxonic laws of his predecessor, varied perhaps in some circumstances, according to the exigency of the present times. And I take the laws of King Henry I. to be a collection or system of such laws, drawn up in compliance with the most importunate clamours of his people.

Some of these old Saxonic laws, which were, one would think, least of all agreeable to the mind of the king, are there to be found; as that a clergyman if he have not married, and wholly abandoned himself to a secular way of living, shall be tried by his bishop only, for any crime, great or small, c. 57. Somner in his MS. notes calls this Becket's law; and from thence concludes that additions have been made to these laws since that archbishop's death: yet I do not think this a just conclusion: for the collection of Edward the Confessor's laws in the former volume, bearing date there 1064, (law 3 and 5,) do expressly give this privilege to clergymen. Among many penances inflicted by these laws, there is a penance assigned particularly for killing men in battle, or in defence of one's natural lord, c. 68. Nay, in opposition to popes, councils, and the mandate of the Conqueror, the bishop is again required to sit in the county court, c. 7 and 31. Countenance is given to making appeals to Rome in some cases, c. 5. And this was every now and then practised in the Saxonic times; but it never grew into a settled course of proceeding, till Henry of Winchester introduced it, by being legate constantly resident here in England. The only law that concerns the Church, and which seems perfectly new, to my observation at least, is that in c. 89, where he that is impeached for murdering father, mother, &c., if he denies it, is obliged to undergo the ordeal of walking over heated ploughshares. This is there called a Salic law *.]

* [For the laws of King Henry the First, see Thorpe, Ancient Laws and Institutes. They are also in Lambard's Archæonomia, ed. Wheloc, and Wilkins, Leges Anglo-Saxonicæ.]

## A.D. MCII.

### PREFACE TO ANSELM'S CANONS AT WESTMINSTER.

During the unhappy reign of William Rufus there was no ecclesiastical synod, and nothing went right. Lanfranc, having sat above eighteen years in the archbishop's chair, died in the year 1089, and the see remained vacant near five years. And though Anselm was consecrated toward the end of the year 1093, yet he had no time for regulating the Church. He had first a long contention with the king (William Rufus) which he maintained with great fierceness and obstinacy, concerning his receiving the pall from Pope Urban, whom the king did not acknowledge to be duly elected. Afterwards he was engaged in a dispute with the same prince and his brother and successor Henry I. concerning the right of investiture: for bishops here in England, as well as in other Churches, used to receive a ring and pastoral staff from the king upon their doing homage to him before their consecration. This practice seems to have been introduced by the see of Rome. For Pope Adrian in a synod anno Dom. 786*, gave Charles the Great power to elect the future popes, and determined that archbishops and bishops should receive investiture from him, and forbad any to be consecrated under pain of anathema, that were not so invested, and these facts stand recorded in the body of the canon law. Dist. lxiii. c. 22, 23. And though the same was done again near a hundred years after by Pope Leo to Otho, yet by Anselm's time the popes had repented of their predecessor's easiness, and this practice of princes was called the heresy of investitures, and bishops in many places refused to take the staff and ring from kings; for it was thought inconsistent with their spiritual authority, which they received from the pope only under Christ. By means of these heats, Anselm spent most of the sixteen years of his primacy in banishment abroad or in conflicts at home; and the generality of the bishops stood with the king, and against the archbishop in these points. However, he assembled a synod for the reformation of the Church.

* ["It is mentioned earlier in the life of Romanus, Bp. of Rouen, 623, who received the staff from Clovis II. Burnet, Rt. of Princes, p. 174." MS. note Wrangham.]

## A.D. MCII.

### ANSELM'S CANONS AT WESTMINSTER.

LATIN. Sir H. Spelman, vol. ii. p. 23. [Wilkins, vol. i. p. 382.]

In St. Peter's church on the west side of London, (i. e. Westminster,) this Anselm, archbishop of Canterbury,[a] Girard, archbishop of York, and other bishops and abbots, with the consent of the king and principal men of the whole realm; the archbishop met in synod petitioning they might be present, to the intent that what was done might be more unanimously observed; especially, because for long want of synods Christian zeal was grown cold, says Malmsbury*. In this

* [Rather Eadmer, followed by Malmesbury. Wilkins, following Cossart in his correction of Binius, shews by quoting the narrative of Eadmer, that the various notices collected under the year 1102 by Spelman, pp. 21-5, belong to one and the same council held in that year at London.

"Per idem tempus (inquit Eadmerus, Hist. Nov., lib. iii. p. 67, seqq.) celebratum est generale concilium episc. et abbatum totius regni in ecclesia B. Petri apostolorum principis, quæ in occidentali parte Lundoniæ sita est. Cui concilio præsedit Anselmus, archiepisc. Dorobernensis, considentibus secum archiep. Eboracensi, Gerardo, Mauritio, episc. Lundonensi, Willelmo, electo episcopo Wintoniensi, Roberto, episc. Lincolniensi, Samsone Wigornensi, Roberto Cestrensi, Johanne Bathoniensi, Herberto Norwicensi, Radulpho Cicestrensi, Gundulfo Roffensi, Hervæo Bangorensi, et duobus noviter investitis, Rogerio scilicet Serberiensi, et Rogerio Herefordensi. Osbernus autem Exoniensis infirmitate detentus, interesse non potuit. In hoc concilio multa ecclesiasticæ disciplinæ necessaria servari Anselmus instituit, quæ postmodum sedis apostolicæ pontifex sua auctoritate confirmavit. Cujus concilii seriem, sicut ab eodem patre Anselmo descripta est, huic operi inserere non incongruum existimavimus. Scribit itaque sic:

Anno dominicæ incarnationis MCII, quarto autem præsulatus Paschalis summi pontificis tertio regni Henrici, gloriosi regis Anglorum, ipso annuente celebratum est concilium in ecclesia beati Petri, in occidentali parte juxta Lundoniam sita; communi consensu episcoporum, et abbatum, et principum totius regni. In quo præsedit Anselmus, archiepiscopus Dorobernensis, et primas totius Britanniæ, considentibus venerabilibus viris Gerardo, Eboracensi archiepiscopo, Mauritio, Lundoniensi episcopo, Willielmo, Wintoniæ electo episcopo, aliisque, tam episcopis quam abbatibus. Huic conventui affuerunt, Anselmo archiepiscopo petente a rege, primates regni; quatenus, quicquid ejusdem concilii auctoritate decerneretur, utriusque ordinis concordi cura et solicitudine tutum servaretur. Sic enim necesse erat, quum multis retro annis synodali cultura cessante, vitiorum vepribus succrescentibus, christianæ religionis fervor in Anglia nimis refrixerat. Primum itaque ex auctoritate sanctorum patrum simoniacæ hæresis surreptio in eodem concilio damnata est. In qua culpa inventi, depositi sunt Guido, abbas de Perscor, et Wimundus de Tavestoch, et Ealdwinus de Rameseia, et alii nondum sacrati, remoti ab abbatiis; scilicet Godricus de Burgo, Haymo de Cernel, Egelricus de Middeltune. Absque simonia vero remoti sunt ab abba-

synod three great abbots were deposed for simony, three that had not yet been consecrated were turned out of their abbeys, and three others were deprived for other crimes, though several of them were afterwards restored by dint of money, and farther it was decreed,

[a] Thomas his predecessor attended Lanfranc of Canterbury [in five councils, says a MS. in the Cotton library, Sir H. Spelman, p. 15. In the first copy of Sir H. Spelman, eleven bishops are mentioned; among them, Herveus bishop of Banchor, the first Welsh bishop that I ever observed present in an English council.

[We are not to look on this as the beginning of a coalition between the English and Welsh Church, (which yet seems to have been brought about within twenty-five years from this time,) but Herveus pretended to have come hither as to a place of refuge, having been ejected from his see by secular violence; but he was suspected to aim at an English bishopric, and he obtained one. On the death of the last abbot of Ely the king granted to him the custody of that abbacy; and he so effectually ingratiated with the monks as to gain their consent to have their abbacy erected into a bishopric. The king and pope approve of their design, and confirm it. The bishop of Lincoln would not permit his diocese to be dismembered till they purchased his consent with a good manor. Thus Herveus founded the see of Ely, and became first bishop there. The monks found reason to repent of their easiness, for in separating the estate between himself and them (which was now the general practice) he left only the barren and worthless part of the lands to the monks. In this and other particulars, he shewed himself unworthy of the kindness they had shewed him.] [Addenda.]

The archbishop ordained two others at this assembly, viz., Roger the king's chancellor to Salisbury, and Roger his larderer to Hereford; but he died at London presently after his consecration.

1. That bishops do not keep secular courts of pleas, that they be appareled not as laymen but as becomes religious persons, and have honest men to bear testimony to their conversation.

2. That archdeaconries be not let to farm.

3. That archdeacons be deacons.

4. [b]That no archdeacon, priest, deacon, or canon marry a

tiis, pro sua quisque causa, Richardus de Heli, et Robertus de Sancto Edmundo, et qui erat apud Micelenei.

II. Statutum quoque est, ne episcopi secularium placitorum officium suscipiant;" &c. Wilkins, vol. i. p. 382.

In the first as well as the remaining canons, Wilkins, quoting from Eadmer, agrees with Spelman's second copy, of which Johnson's is a fair translation, except in the first canon relating to simony, which Johnson abridges and makes part of the preface.]

wife, or retain her if he be married. That every subdeacon be under the same law though he be not a canon, [c]if he hath married a wife after he had made profession of chastity.

[b] The reader by comparing this and the sixth and seventh canon with the first of Lanfranc's, 1076, will see how the zeal of the prelates of this age against the clergy's marriage was improved in less than thirty years' time. They well knew that a married clergy could never turn slaves to the pope against the civil power, which was the chief aim of Anselm and his adherents.

[c] By this it appears that there were some subdeacons yet alive who had taken that order, before men were obliged to profess chastity at the receiving of it: and well might they content themselves with it, while this order qualified them to hold a canonry. But this last clause is not in the other copy.

5. That the priest who is lewd with a woman is not a lawful priest*; let him not celebrate mass or be heard by others, if he do.

6. That none be ordained subdeacon, or to any degree above that, without professing chastity.

7. That [d]sons of priests be not heirs to their fathers' churches.

[d] Eadmer, the writer of Anselm's life, tells us that it was forbid by the Church of Rome for the son of a clergyman to be admitted into ecclesiastical offices, but that Pope Pascal dispensed with this in England by a decretal sent to Anselm. I find nothing of this elsewhere, but the reason given by Eadmer for this dispensation is very observable, viz., that "the greater and better part of the clergy in England were the sons of priests †."

8. That no clergymen be reeves or agents to secular persons, nor judges in case of blood.

9. That priests go not to drinking bouts, nor drink to pegs.

10. That priests' clothes be all of one colour, and their shoes plain.

11. That monks or clergymen who have forsaken their order do either return or be excommunicate.

12. That the [e]crown of clergymen be visible.

* [Ut presbyter quamdiu illicitam conversationem mulieris habuerit, non sit legalis, S. W.]

† [Eadmer, ad calc. Anselmi, Op. (Par. 1721) p. 76.]

[e] That is, the tonsure or circle on the crown of the head, which was always kept shaved.

13. That [f] tithes be not paid but to the Church only.

[f] This seems to intimate that the Norman lords had impropriated some tithes, and that the synod intended to resume them.

14. That churches or prebends be not bought.

15. That new chapels be not made without consent of the bishop.

16. That churches be not consecrated till all necessaries be provided for the priest and it.

17. That abbots do not make soldiers, and that they eat and sleep in the same house with their monks, except in case of necessity.

[By *facere milites* here we may understand "creating of knights." Great abbacies were now baronies, every baron was to maintain several knights; these abbots were bound to do this, as well as other barons. But they are here forbid to invest them in their knighthood, according to the forms and ceremonies used by secular barons. This was thought inconsistent with their character, as they were ecclesiastics.] [Addenda.]

18. That monks enjoin penance to none without their abbot's consent, and that abbots give no licence to enjoin it to any but such whose souls are intrusted to their care.

19. That monks be not godfathers, nor nuns godmothers.

20. That monks may not hire farms.

21. That monks do not accept [of the impropriations] of churches without the bishop's consent, nor so rob those which are given them of their revenues, that the priests who serve them be in want of necessaries*.

22. That promises of marriage made between man and woman without witness be null, if either party deny them.

23. That they who have hair be so clipped that part of their ears be visible, and their eyes not covered.

24. That they who are [g] related within the seventh degree be not coupled in marriage, nor cohabit if married; and if any that is conscious to this crime do not discover it, let him acknowledge himself a complice in the incest.

[g] See Lanfranc's canon, 6. 1075.

* [ut presbyteri ibi servientes, in his, quæ sibi et ecclesiis necessaria sunt, penuriam patiantur, S. W.]

25. [h]That corpses be not carried out of their parishes to be buried, so that the priest of their parish lose his just dues.

[h] The canon law in this case obliged those who had buried the corpse in their church or churchyard to take it up and resign it to the church to which it belonged while alive. Decretal, lib. iii. tit. 28. c. 5, 6.

26. Let no one attribute reverence or sanctity to a dead body or a [i]fountain, or other thing (as it sometimes is to our knowledge) without the bishop's authority.

[i] This stupid superstition* continued down to the fourteenth century. It is complained of and forbid in a diocesan synod at Winchester, A. D. 1308, Sir H. Spelman, vol. ii. p. 456, and is still continued with the approbation of the ruling part of the Church of Rome.

27. That none exercise that wicked trade which has hitherto been practised in England, of selling men like beasts.

28. In the same synod, profligate, obstinate sodomites, were struck with anathema, till by confession and penance they deserve absolution[k]: and it was ordained that if any ecclesiastical person were guilty of this crime, he be never admitted to any higher order, and that he be degraded from that in which he is: if any layman, that he be deprived of all lawful dignity in the whole realm, and that no one but the bishop presume to absolve him, except he be a [l]vowed regular.

[k] This is left out in the first copy of Sir H. Spelman, and the reason is plain, viz., that this filthy vice was then so rife that Anselm was forced to forbear the publication of it every Lord's day, according to the decree of council: and indeed it is particularly observed, that all these canons were soon brought into contempt, insomuch that the clergy of York province absolutely refused to profess chastity upon their ordinations, and to submit to the other regulations here enjoined: even the most beastly sin here mentioned found its patrons; insomuch that Anselm himself was awed into a connivance at it, till this king about the tenth year of his reign was pleased to countenance the execution of these canons.

[l] Vowed regulars were to be absolved by their abbots, or other superiors.

29. That the aforesaid excommunication be published in all churches throughout England, every Lord's day.

* ["Vid. Edgar's Canons, A.D. 960. 16." MS. note Wrangham.]

## A.D. MCVII.

### PREFACE. COMPROMISE OF INVESTITURES.

After a long dispute between King Henry I. and Archbishop Anselm upon the point of investitures, the king finding that the pope was against him, and that though Girard, archbishop of York, was willing to consecrate such as received investiture from the king, yet William Giffard, bishop elect of Winchester, refused to be consecrated by him; and Reinelm, bishop of Hereford, resigned his bishopric upon a scruple of conscience, because he believed himself guilty of a great offence in having received investiture from the king; therefore this wise prince, being not willing to push matters too far, though he had banished William Giffard for his contempt of the archbishop of York's consecration, recalls him, and assembles all his bishops, abbots, and great men at London, where the dispute concerning investitures was compromised by the two following articles.

## A.D. MCVII.

### COMPROMISE OF INVESTITURES.

LATIN. [Sir H. Spelman, vol. ii. p. 27. Wilkins, vol. i. p. 387*.]

1. THAT for the future none be invested by the king, or any lay hand, in any bishopric or abbey, by delivering of a pastoral staff or a ring.

2. By the concession of Anselm, none elected to any prelacy shall be denied consecration upon account of the homage which he does to the king.

The king is also said at the same time to have promised that he would forthwith deliver vacant bishoprics and abbeys, to the successors; and the dispute which had lately been revived between the two archbishops concerning the primacy was at the last determined as formerly; and Girard of York, laying his hand on Anselm's of Canterbury, swore the same subjection to him that he had formerly done, when he was consecrated to the bishopric of Hereford; yet this controversy was renewed upon the death of Girard; for Thomas elect of York refused to swear obedience to Anselm; and thereupon Anselm pronounces anathema against any that should consecrate him till he complied. It seems probable that he cursed too all that should abet Thomas in refusing obedience to the see of Canterbury; at least King Henry so understood it; for upon Anselm's death he called a council, and declared he would not continue one hour under Anselm's curse; and therefore with consent of all the bishops and great men, Thomas was obliged to profess obedience in the usual form, to Ralph, Anselm's successor. And, says Hoveden, Anselm consecrated five bishops in one day at Canterbury, (others

* ["Ex Eadmer. Hist. Nov., lib. iv. p. 91. Cf. R. Hoveden, A.D. 1108, p. 471. ed. Savile."]

say six,) the suffragans of that see assisting him in that office; that is, as he adds, Girard archbishop of York, Robert of Lincoln, John of Bath, Herbert of Norwich, Robert of Chester, Ralph of Chichester, Ranulph of Durham. No body, as the historian adds, remembered so many bishops elected and consecrated at once, since the time of Plegmund in the reign of Edward the Elder, who consecrated seven bishops to seven churches in the same day*.

* [See in Johnson's first volume, A.D. 908.]

## A.D. MCVIII.

### ANSELM'S CANONS AT LONDON.

LATIN. Sir H. Spelman, vol. ii. p. 29. [Wilkins, vol. i. p. 387 *.]

ANSELM, archbishop of Canterbury, and Thomas elect of York, and all the bishops of England, ordained these statutes in the presence of King Henry the First, and with consent of his barons.

1. That priests, deacons, and subdeacons live chastely, and keep no women in their houses, but such as are nearly related, according to the council of Nice.

2. That such of them as have kept or taken women since the prohibition at [a] London, and have celebrated mass, do so wholly discard them, as not to be with or meet them in any house knowingly; and that the women may not live on any ground that belongs to the Church.

[a] Viz., A.D. 1102.

3. If they have any honest occasion to speak with them, let it be done without doors, before two lawful witnesses.

4. If any of them are accused by two or three lawful witnesses, or by the public report of the parishioners, to have transgressed this statute, let him, if a priest, make his purgation by six witnesses, if a deacon, by four, if a subdeacon by two: and if he fail, let him be deemed a transgressor.

5. Let such priests as choose to live with women, in contempt of God's altar and their holy orders, be deprived of their office and benefice, and put out of the choir, being first pronounced infamous.

6. And if he celebrate mass, and do not leave his woman, let him be excommunicate, unless he come to satisfaction within eight days after summons.

7. Let archdeacons and canons be liable to the same sentence, as to their leaving their women, and as to the censure to be passed if they transgress.

* ["Ex Eadmer. Hist. Nov., lib. iv. p. 94; et Flor. Wigorn. et Rog. Hoveden."]

8. All archdeacons shall swear that they will not take money to tolerate men in transgressing this statute; nor for tolerating priests whom they know to keep women, to celebrate mass, or to have vicars. Deans shall do the same. He that refuses shall forfeit his archdeaconry or deanery.

9. Priests who choose to leave their women, and to serve God and His holy altars, shall have vicars to officiate for them during the forty days in which they are to desist from their office, and are to have penance enjoined them at the bishop's discretion.

10. The bishops shall take away all the moveable goods of such priests, deacons, subdeacons, and canons as shall offend herein for the future; and also their [b]adulterous concubines, with their goods.

[b] I conceive the adulterous or lewd woman was still forfeited as a slave to the bishop according to the old English laws.

## A.D. MCXXVI.

### ARCHBISHOP CORBOYL'S CANONS AT LONDON.

A NATIONAL synod was called at London to be holden in St. Peter's church, Westminster, by William Corboyl, archbishop of Canterbury; but [a]John de Cremona, Pope Honorius the Second's legate, presided in it: Thurstan, archbishop of York, was there present, with twenty bishops of divers provinces, and about forty abbots, and an innumerable multitude of clergy and people.

[a] This legate lies under an imputation of being caught in bed with a whore the night after he had passed these decrees, the thirteenth whereof absolutely forbids clergymen the use of women.

[Addenda.] [The monk of Winchester speaks of this miscarriage of the legate as what happened some time after at Durham, whither the legate went to inflict censure on that monster of a bishop Ralf Passeflabere, who by his artifice and lewdness led the legate into the snare. No wonder therefore that these canons grew into contempt.]

It is observable that this W. Corboyl is said to have been the first who ever was archbishop of Canterbury that had not been a monk, and of the Benedictine order: but he had been a canon regular: yet he was much

[Addenda.] stomached by the monks. [Radul. de Diceto affirms that Stigand, Lanfranc's immediate predecessor, went in the habit of a clerk while he was archbishop, which seems to mean that he never had been monk *.] This archbishop's letter to the bishop of Landaff for summoning him to this legatine council is extant, Sir H. Spelman, vol. ii. p. 33†. The archbishop intimates that this council was to be held by the legate, but by the archbishop's allowance, *nostra conniventia* in the Latin. It is farther observable, that the right of electing the archbishop was not yet settled. The monks of Canterbury proposed four to the king and council, desiring them to choose one out of that number; but the king referred it to the bishops, though the lords favoured the monks. At last the bishop proposed four to the monks; they chose Corboyl, one of the four.

* ["Bp. Parker makes this William a Benedictine monk, but is blamed for it by Picardus in his notes on Guil. Neubrig., p. 607. However, it cannot be denied there were others made archbishops without being monks. Vid. supr., Odo's canons in the last note, A.D. 943." MS. note, Wrangham.]

† [Wilkins, vol. i. p. 408.]

*In this council the following heads were published and confirmed.*

LATIN. Sir H. Spelman, vol. ii. p. 33. [Wilkins, vol. i. p. 408*.]

WE, following the ancient fathers, forbid by apostolical authority, any man to be ordained for money.

2. We charge that no price be demanded for chrism, oil, baptism, visiting or anointing the sick, for the communion of the body of Christ, or for burial.

3. That at the consecrating of bishops, blessing of abbots, dedicating of churches, a cope, a [b]carpet, a towel, a [c]basin be not demanded by force, nor taken unless freely offered.

[b] Lat. *tapete.* [c] Lat. *baccinia.*

4. That no monk or clergyman accept a church, tithe, or any ecclesiastical benefice at the hand of a layman, without the bishop's consent: that every such donation be null, and the offender liable to canonical punishment.

5. That no one challenge a church or prebend by inheritance from his father, or appoint his own successor to an ecclesiastical benefice: if it be done, we declare it of no force, saying with the Psalmist, "My God, make them as a wheel who have said, Let us [d]possess the sanctuary of God as an inheritance."

[d] This is according to the LXX and vulgar Latin Bible, and the Hebrew will very well admit of this translation.

6. That clergymen who have churches or benefices be deprived of them if they refuse to be [e]ordained (though their bishops invite them to it) that they may live more at liberty.

[e] That is, to be made deacons or priests. By this it is clear that those in the inferior orders were in this age capable of benefices. See Corb. 1127, 4.

7. That none be promoted to a deanery or priory but a priest; none to an archdeaconry but a deacon.

8. Let none be ordained priest or deacon but to some

* ["Ex Sim. Dunelm. in hoc anno. Necnon cod. MS. conciliorum Wigorn. ecclesiæ collat. cum MS. colleg. S. Joh. Bapt. Oxon. n. H. 56."]

certain title; if he be, let him not enjoy the honour of his order.

9. Let no abbot, clergyman, or layman eject any one from a church to which he was [f]ordained by the bishop, without the bishop's sentence, under pain of excommunication.

[f] To ordain, sometimes signifies to institute.

10. Let no bishop ordain or pass sentence on the [g]parishioner of another: for no man is bound by a sentence passed by an improper judge.

[g] Lat. *parochianum*, therefore the whole diocese, as we now call it, was the bishop's parish, and all the people his parishioners.

11. Let no one receive to communion him that is excommunicate by another; if any one do*, let him be deprived of Christian communion.

12. That no one person have two [h]honours in the Church†.

[h] That is, I suppose, two dignities, or benefices. See Corb. 1127, 8.

13. By apostolical authority we forbid priests, deacons, subdeacons, and canons to dwell in the house with any woman‡, excepting a mother, sister, or aunt, or such women as are wholly unsuspected. Let the offender on confession or conviction suffer the loss of his order.

14. We forbid all usury and filthy lucre to all clergymen: let the offender upon confession or conviction be degraded.

15. We doom them to excommunication and perpetual infamy who practise sorcery, sooth-sayings, or auguries, or that approve of them.

16. We forbid them that are related within the seventh degree to be married; if any such are married, let them be separated.

17. That no regard be had to husbands, or the witnesses they produce, when they implead their wives as too near akin to them§.

* [quod si scienter fecerit, S. W.]

† [12. Præcipimus etiam ne uni personæ in Ecclesia diversi tribuantur honores. S. W.]

‡ [13. Presbyteris, diaconibus, subdiaconibus canonicis, uxorum, concubinarum, et omnium omnino fœminarum contubernia auctoritate apostolica inhibemus. S. W.]

§ [Johnson *omits* sed prisca patrum in omnibus servetur auctoritas, S. W.]

As soon as these canons or decrees were made, the legate made haste toward Rome, and took along with him the two English archbishops, William and Thomas, that their dispute concerning the primacy might be ended in the pope's court of audience*.

## A.D. MCXXVII.

### CORBOYL'S CANONS AT WESTMINSTER.

William (Corboyl) archbishop of Canterbury, and [a]legate of the pope, called a synod at Westminster [and] ten English bishops were there. Thurstan, archbishop of York, sent his excuse, Randulph of Durham was taken sick on the road. Simon of Worcester was beyond sea visiting his relations. Three of the Welsh bishops were there. Of the bishop of St. Asaph there is no mention: the sees of London and Coventry were vacant. No notice is taken of any abbots in this assembly; vast multitudes of the clergy, and laity of all ranks flocked to the council; some secular matters were here decided, some others were delayed, others could not be heard through the tumultuousness of the rabble. The synod sate three several days. Sir H. Spelman, vol. ii. p. 35. [Latin. Wilkins, vol. i. p. 410 †.]

[a] This was the first archbishop who had the title of legate of the see apostolical. It is evident that his predecessors exercised all the authority that he did; they particularly called synods of the two provinces; but that this authority might seem to be derived from the see of Rome, the pope confers the empty character of legate on the archbishop, and he was legate both of England, and Scotland: for the archbishop of York (whose province included Scotland) was subject to him.

The decrees made by the general consent of the bishops here follow.

1. By the authority of Peter, the prince of the Apostles, and our own, we forbid churches, benefices, and dignities to

* [His taliter synodali decreto confirmatis, Johannem Romam revertentem comitantur ab ipso evocati Thurstanus Eboracensis et Willielmus Cantuariensis, de suis causis in apostolica audientia acturi. S. W.]

† ["Ex continuatore Flor. Wigorn. collat. cum MSS. Regio 10. A. viii. et Spelm."]

be in any wise sold or bought. If the offender be a clergyman (though a regular canon or monk) let him be degraded; if a layman, let him be [b]outlawed and excommunicated*.

[b] Here the bishops assume to themselves a civil power, contrary to right and good sense.

2. By authority of the apostolical see we wholly forbid any man to be ordained or preferred by means of money.

3. We condemn all demands of money for admitting of monks, canons, or nuns.

4. Let none that is not priest be made a dean[c], none archdeacon that is not a deacon: if any in the inferior orders refuse at the bishop's admonition to be ordained [priest or deacon,] let him be deprived of the dignity assigned him†.

[c] See Corb. can. 7, 1126, and observe that heads of monasteries were often called deans in this age.

5. We forbid priests, deacons, subdeacons, and canons to live with women not allowed by law. But if they adhere to their concubines or wives, let them be deprived of their ecclesiastical order, dignity and benefice. If any such are [d]parish priests, we cast them out of the choir, and decree them to be infamous.

[d] Here is the first mention of a parish priest. And I have scarce found any thing more puzzling than to get an exact notion of his office, for he was not either rector, vicar, proper curate, or assisting priest. 1. In this canon he is distinguished from the beneficed priest; for the concubinary beneficed priest was deprived, but the parish priest is for the same crime cast out of the choir only, that is, he was to cease from saying mass and the hours with the rest of the clergy, which was therefore his principal privilege: and in most places where this name occurs he is clearly enough distinguished from the incumbent, except perhaps in the third Const. of Otto and first of Othob., which in this respect are but as one. 2. He was no proper curate. Archbishop Arundel in his first Const.‡ and Islip in his first Const.§ expressly distinguish between parish priests and them who attend the cure of souls. Peter Quevil, bishop of Excester, 1287, assigns to the curate, whom he and many others

* [Johnson *omits* et ejusdem ecclesiæ vel beneficii potestate privetur. S. W.]

† [Quod si quis ad hos honores, infra prædictos ordines, jam designatus est, moneatur ab episcopo ad ordines accedere: quod si juxta monitionem episcopi ordinari refugerit, eadem ad quam designatus fuerat careat dignitate. S. W.]

‡ [A.D. 1408.]

§ [A.D. 1362.]

call the chaplain, the same salary that was then allowed to vicars, viz., five marks per annum, but the parish priest is allowed but forty shillings. 3. He was none of those called assisting, auxiliary, or soul mass-priests. For these last have by the same Const. of Peter Quevil an annual salary of fifty shillings assigned to them, and are there mentioned as distinct in office from them. (See Sir H. Spelman, vol. ii. p. 374*.) Yet, says John Athone, the parish priest, according to the common language of this kingdom, ministers† instead of the rector, (in his gloss on the third Const. of Otto, p. 11.) He was a temporary vicar, says Lyndwood‡ on the eighth Const. of Peckham, 1281, p. 341. Since therefore they served for others, and yet were not proper curates, nor assisting mass-priests, they must, I conceive, have been such priests as officiated under resident incumbents, who were not either able or willing to officiate themselves: they had not the cure of souls; for that was in the incumbent entirely, while he resided; and he performed no religious office but what the incumbent was to have personally done, if he could or would, and therefore was not an assisting mass-priest, whose proper business it was to say masses for souls. He who is now called a reader in our great parish churches doth most resemble the old parish priest: for he acted entirely under the direction of the incumbent, and performed only so much of the service as he could not, or was not disposed to perform himself. When the incumbent was a priest not perfectly disabled with age, or overcome by an unactive humour, his business could not be great, and therefore Peter Quevil assigns him but three marks, or forty shillings, for his salary, and he supposes the incumbents would think this too much, and therefore he bids them ease themselves, and serve the cure in person. When the incumbent was only in the inferior orders, a greater burden must lie on the parish priest (and this was very often the case), and then it was necessary that the incumbent should have his parish priest at hand to do such offices as he himself could not; therefore it is very probable, that he had his diet and lodging with the incumbent, and for this reason his salary might be less than that of an assisting priest. And it is observable that the reason given by Peter Quevil for allowing him forty shillings per annum, is, lest he should beg, or do worse, or go in scandalous apparel. Forty shillings was a good allowance for clothes, when serjeants-at-law and the attorney-general had but two marks per annum each for their robes. There are some memorials in Bishop Kennet's Par. Antiq., p. 430, 431, which illustrate this. John de Capella was about

* [Wilkins, vol. ii. p. 147.]

† [*Parochiales presbyteri.* Prope stat litera juxta usum Regni pro his qui vice et loco Rectorum hujusmodi Baptismi ministerium exercent. Vel potest intelligi secundum jura de ipso Rectore vel Vicario perpetuo, qui proprio jure a tempore institutionis curam parochiæ gerit. John de Athon in Const. Othonis 3. p. 11.]

‡ [*Aliorum sacerdotum.* Si intelligas de parochialibus sacerdotibus, qui sunt vicarii temporales, idem dic quod dixi in glo. præcedenti, quod sc. in foro conscientiæ subesse debent principali curato illius ecclesiæ, sive sit rector sive vicarius. Alioquin si rector sit longo tempore abfuturus, tales habebunt recursum ad episcopum, vel ipsius deputatum ut hic. Provinciale, lib. v. tit. 16. p. 341.]

thirty-three years incumbent in the rectory of Ambrosden, and yet but only an acolyth, he died 1336: upon his death the rectory, as was before provided by the pope's bull, was actually appropriated to a religious house, and a perpetual vicar instituted and endowed. The mansion assigned to the vicar was that house, in which the parish priest of that church used to dwell, as the words of the endowment are. John de Capella being but acolyth was obliged to have a parish priest to officiate for him. John was probably a married clerk, for this was the most prevailing reason against taking superior orders, that they must thereupon dismiss their wives. But on this consideration it was not so proper that the parish priest should dwell under the same roof with him; therefore he accommodated him with another house, which was an appurtenance of the parsonage, and which was afterwards made the vicar's mansion.

I know but one objection to this, viz., that Arundel seems to distinguish between parish priests and temporary vicars in his first Const., but there the latter title may be exegetical of the former. See the Const. itself. And temporary vicar sometimes denotes a proper curate: and it is evident that none were esteemed proper curates, but where the incumbent was for the most part absent or lunatic; and in this last case, though the bishop is to assign the curate, and the coadjutor to manage and dispose of his ecclesiastical revenue; yet the coadjutorship and the curacy are two distinct offices.

J. Athone in the place before cited does suppose that the word parish-priest may be extended to the rector or vicar by the canonists; and if it be allowed that Otto so meant it, yet it must be imputed to him as an Italicism. The English writers of those ages did not so speak. The articles of enquiry for the dioceses of Lincoln, 1230, (Sir H. Spelman, vol. ii. p. 192 *,) agree with this account. Art. 1. Are any rectors, vicars, or parish priests enormously illiterate? Art. 13. Is there any parish priest who hath not sufficient maintenance from his rector.

6. We require archdeacons and other [e] ministers whom it concerns to use their utmost diligence for the rooting out this plague from the Church of God. If any neglect or connive at it, let them be once and twice corrected by the bishop, and the third time more severely treated according to canon.

[e] By ministers of the church we may understand the reeves of the church, such laymen as by the bishop's appointment took care of the secular affairs of the diocese.

7. That the concubines of priests and canons be expelled out of the [f] parish, unless they are lawfully married there. If they are hereafter found faulty, let them be seized by the [*vide supra*[e]] ministers of the church; and we charge that

* [Wilkins, vol. i. pp. 627-8.]

they be not detained by any power, great or [*vide supra* [b]] little, under pain of excommunication, but that they be freely delivered to the ministers of the church and brought under ecclesiastical discipline, or [*vide supra* [b]] servitude at the discretion of the bishop.

[f] It is not certain whether this word be here meant in the modern sense.

8. We forbid any man to hold several archdeaconries in several bishoprics under pain of anathema. But let him stick to that he first took. Let bishops forbid the priests, abbots, monks, and priors that are subject to them to take any thing to farm.

9. We charge tithes as the portion of God to be paid in full *, and forbid churches or [g]tithes or ecclesiastical benefices to be given or taken by any person without the consent of the bishop.

[g] Here the reader will observe that tithes were sometimes given without the churches to which they belonged, that is, certain parcels or portions of tithes were given off from the church to whom they had of custom been paid by the prevailing power of some great man that was patron of the church ; and these portions of tithes were for the most part given to monasteries, or such like religious bodies : this gives an account of those ancient deeds, whereby the tithes of certain vills or farms were granted to some ecclesiastical bodies long after all the nation was brought under a civil obligation of paying tithes of all products of the earth ; many things prohibited by canon were still practised ; you have the like prohibition, Corb. 4, 1126.

10. That no abbess or nun use more costly apparel than such as is made of lambs' or cats' skins.

King Henry the First is said to have approved and consented to these decrees, and yet he certainly protected the concubinary and married priests from the fury of the prelates. Matthew Paris says, the king eluded all these provisions by the simplicity of the archbishop, for the king drew a promise from the archbishop that his majesty should be intrusted with the execution of these decrees, and he executed them only by taking money of the priests as a ransom for their concubines †.

* [9. Decimas sicut Dei summi dominicas ex integro reddi præcipimus. S. W.]

† [Matth. Paris, Hist. Angl. A.D. 1129.]

## A.D. MCXXXVIII.

### LEGATINE CANONS AT WESTMINSTER.

Latin. Sir H. Spelman, vol. ii. p. 41. [Wilkins, vol. i. p. 415*.]

Alberic, bishop of Ostia, legate from Pope Innocent the Second, held a national council at Westminster in the vacancy of the see of Canterbury, at which were present eighteen bishops of diverse provinces, and about thirty abbots, who all consented to the following canons.

1. Following the canonical institutes of the fathers, we forbid by apostolical authority any price to be demanded for chrism, oil, baptism, penance, visitation of the sick, espousals of women, unction, communion of the body of Christ, or burial, under pain of excommunication.

[Addenda.] ' [Notwithstanding this and many other prohibitions yet it is clear in fact that some yearly payment was made by the priest when he received the chrism. Ernulf, bishop of Rochester, hath inserted into the Textus Roffensus his own grant of the pence paid on this occasion, as likewise of the pence paid by every priest when he came to synod, for maintaining the buildings of the monastery. Pope Eugenius by his bull confirms the bishop's grant: he expressly mentions the synodal pence, though he could not for shame mention the pence for chrism; and the prior and monks for several ages after received them. There is in the same Textus an account of these pence, by which it appears that every church (peculiars as well as not peculiars) paid nine-pence on this account and every chapel six-pence. And it ought not to be omitted, that in the former part of this bull the pope confirms to the prior and monks their estate, as distinct and separate from that of the bishop, or rather, he ratifies Archbishop Theobald's confirmation of it, which is there also inserted.

* ["Ex Rich. Hagustaldensi de gestis R. Stephani, apud X. Script., p. 324. seq." Wilkins gives a long extract from Richard of Hexham before the canons, and another after them; the following paragraph immediately precedes the canons:

Præfuit autem illi Synodo Albericus, Hostiensis episcopus, et prædicti domini papæ Innocentii in Angliam et Scotiam legatus, cum episcopi diversarum provinciarum xviii., et abbatibus circiter xxx. et cum innumera cleri et populi multitudine. Vacabat autem tunc temporis Cantuariensis ecclesia, et infirmabatur Thurstanus, Eboracensis archiepiscopus; Willielmum tamen, ecclesiæ S. Petri Eboracensis decanum, cum quibusdam clericis suis illuc direxit.]

2. That the body of Christ be not reserved above eight days, and that it be not carried to the sick but by a priest or deacon; in case of necessity by any one, but with the greatest reverence.

3. That upon the consecrations of bishops and benedictions of abbots, neither a cope nor other ecclesiastical vestment be demanded, nor any thing else, either by the bishop or his ministers: and that upon the dedications of churches, no carpet, towel, basin, or any thing but canonical procuration, be required.

4. If a bishop consecrate a church in his own [a]diocese by the hand of another, let nothing extraordinary be demanded on that account.

[a] Here the word diocese is used for the bishop's district. Alberic brought it with him from Italy.

5. Let no one accept a church or benefice from the hand of a layman. When any man takes investiture from the bishop let him swear on the gospel that he has neither given nor promised any thing for it by himself or by any other person; else the donation shall be null, and both the giver and receiver liable to canonical punishment.

6. The same with Corb. 1126, can. 5.

7. We inhibit clergymen that without letters from their proper bishop have been ordained by one that was not their bishop, from exercise of their office: and let the full restitution of them to their order be reserved to the pope, unless they will [b]take a religious habit.

[b] That is, become monks: for this was esteemed a life of penance.

8. Following the holy fathers, we deprive priests, deacons, and subdeacons, both of their office and benefice, if they are guilty of marriage or concubinary, and forbid any to hear their mass.

9. We lay under the same sentence those clergymen who are usurers, follow filthy lucre, or do public business for secular men.

10. Let him be struck with anathema* that kills a clerk, monk, nun, or any ecclesiastical person, or that imprisons or

* [Johnson *omits* nisi tertio submonitus satisfecerit. S. W.]

lays wicked hands on such. Let none but the pope* give him penance at the last, unless in extreme danger of death. If he die impenitent let his body remain unburied.

11. We charge, that if any man [c] violently take away the moveable or immoveable goods of the church, he be excommunicate, unless he repent upon canonical warning.

[c] King Stephen, who now reigned, had upon his advancement to the throne by a charter which you may see in Sir H. Spelman, vol. ii. p. 38†, made very fair promises to the Church, especially as to their estates, that prelates and others in holy orders should quietly enjoy what the Conqueror left them, and what they had acquired since; that they might dispose of their goods by testament, and that vacant sees should be under the guardianship of the clergy of that church to which the deceased bishop belonged as to temporal matters as well as spiritual. But the king soon forgot his promise, which greatly provoked the Churchmen against him; and it is probable that this canon was directed against the evil instruments who then committed great ravage on the Church. William Martell, (in France,) a notable courtier, was the next year by name excommunicated in a synod on this account.

12. We by apostolical authority forbid any man to build a church or oratory upon his own estate without his bishop's licence.

13. Here we allege the authority of [d] Pope Nicholas, who says, "Since the soldier of Christ and the secular soldier differ from each other, it becomes not a soldier of the Church to bear secular arms;" for effusion of blood can scarce be avoided in this case: farther, as it is abominable for laymen to say mass, and consecrate the sacrament; so it is ridiculous for a clergyman to carry arms, and fight in wars, for St. Paul says, "No one that is a soldier to God entangles himself with the affairs of this life." [2 Tim. ii. 4.]

[d] See Corp. Jur. Canon. Distinct. 50. c. 5.

14. We add the decree of Pope [e] Innocent ‡, that "monks who have been long in a monastery ought not to recede from their former way of living when they become clergymen:" they must continue now they are clerks what they were before, and not lose what they had before their advancement.

* [See Johnson's first volume, A.D. 963. 38. p. 436. §.]

† [Wilkins, vol. i. p. 412.]

‡ [*The Latin has* dicentis Victrico Rothomagensi archiepiscopo, W. Cf. Epist. Innocent. P. I. (A.D. 404.) ad Victricium Episcopum Rothomagensem, Concil., tom. iii. p. 1035. C.]

[e] See ibid., causa 16, quæst. i. c. 3.

15. We forbid nuns, under pain of anathema, to use parti-coloured [f] Grisian sable, marten, ermine, beaver-skins, or golden rings, or to wreath or curiously set their hair.

[f] Lat. *Grisiis*, furs of the Gris petit, a small French animal so called, which some say is grey, others that it is spotted.

16. We charge all to pay the tithe of all their fruit*, under pain of anathema.

17. We ordain, that if schoolmasters hire out their schools to be [g]governed by others†, they be liable to ecclesiastical punishment.

[g] I read *regenda*, not *legenda*.

In this council the election of an archbishop to the see of Canterbury was agitated, and within a few weeks after Theobald was consecrated: some do expressly say that he was elected by the bishops in this council, at the instigation of the king: yet Henry, bishop of Winchester, brother to King Stephen, being legate *a latere* from the pope, held several national councils under that character. In one of these the archdeacons are said to have been present, A.D. 1142, and particularly that the legate had private conference first with the bishops, then with the abbots, lastly with the archdeacons. And the legate in a speech made in this council affirmed that the choosing and ordaining of a king did of right belong principally to the clergy; Sir H. Spelman, vol. ii. p. 45‡. The chief occasion of these synods was the unsettled state of the nation by reason of wars between Maud the empress and Stephen, who had the right of possession. No canons or constitutions were made in any of these synods called by Henry of Winchester, excepting in the last, which here follow. [Post-script.]

* [XVI. De omnibus primitiis rectas decimas dare, apostolica auctoritate præcipimus, S. W.]

† [XVII. Sancimus præterea, ut si magistri scholarum aliis scholas suas pro pretio regendas locaverint, W.]

‡ [Wilkins, vol. i. p. 420: "ex W. Malm. Hist. Novel., lib. ii. p. 188. seq."]

## A.D. MCXLIII.

### LEGATINE CANONS AT WINCHESTER.

LATIN. Sir H. Spelman, vol. ii. p. 47. [Wilkins, vol. i. p. 421*.]

HENRY, bishop of Winchester, the pope's legate *a latere*, held a council in presence of King Stephen at London, in which it was with general consent ordained,

1. That none who [a]violated a church or churchyard, or laid violent hands on a clerk or religious person, should be absolved by any except the pope.

[a] The church or churchyard were violated by fighting or shedding blood there, or by seizing any goods or person within the precincts of holy ground. The present wars occasioned much profanation (if I may so say) of this sort; but it is probable that the legate and prelates had a particular eye to Aubry de Vere, who was charged three or four years before this with an intention to seize this legate, and all the bishops then met in council in the church at Westminster; and Aubry did not deny, but publicly in their presence justified his doing of it, at the command of his master King Stephen, though he was disappointed in his design.

2. That the plough and husbandman in the fields, should enjoy the same peace as if they were in the churchyard.

They excommunicated all that opposed these decrees, with candles lighted: and thus, says Hoveden, the rapacity of the kites was restrained.

This Henry of Winchester is said first to have introduced the practice of appealing to Rome; and on this account as well as others, deserved very ill of this Church and nation.

[Addenda.] [The craft of popes, and the supineness of the English prelates, was never more visible than in point of the legatine power. W. Corboyl, or de Turbine, was the first English bishop that had this feather put into his cap by the pope, (as his predecessor Ralph seems to have been the first that took the wicked oath of obedience to the pope,) but it was soon plucked out again. For within a few months his legateship was forced to

* ["Ex R. Hoveden, p. 488, et Matt. Paris, A.D. 1142."]

submit to John de Crema*, who came here as legate *a latere*, and within a while was wholly divested of it, and it was conferred on Henry, bishop of Winchester. And who could object to such an honour done to the king's brother? It was very agreeable to Henry's inclinations. For he had requested the pope to erect his see into an archbishopric; and the monks of Winchester thought their bishop had a right to primacy, because Birinus their first bishop came as a missionary immediately from Rome, as Augustine did to Canterbury. But the pope, though he would not consent to make Henry a primate, yet he did that which made him more than a primate: for by giving him the legateship, he for the present set him above Canterbury, and made all the bishops in England subject to him. But he soon eclipsed him, by sending Alberic to act as legate *a latere*, and Henry's legateship expired this very year, 1143, together with Pope Innocent II. from whom he had received it. For Archbishop Theobald prevailed with Pope Lucius†, successor to Innocent, not to renew the legatine commission to Henry. And some time after he who had introduced the practice of appeals to Rome, was forced to go thither to answer an appeal made against him by his own monks, for purloining their treasury, and diminishing their great cross, which had weighed five hundred marks of silver and thirty of gold. Thus popes, under pretence of doing honour to English bishops, did really humble and mortify them. And the bishops, by accepting of his insidious honours, did in truth expose themselves and enslave the Church. Theobald was also the pope's legate, but he lived to see his primacy greatly diminished: for the Church of Ireland, which had acknowledged him and his predecessors as their metropolitan, had four primates created in the year 1152 or 3, by Pope Eugenius III.

* ["Qy. John de Cremona was sent legate from the pope A.D. 1125 (or 1126 according to this A.) This is the first time that character was ever received in England. After the breaking up of the council which this legate then held at Westminster, W. Corboyl went to Rome to remonstrate against putting a foreign legate on the English. The pope conferred upon him the same title, and A.D. 1127 he held a council at Westminster both as legate and archbishop. The third legate and the second foreigner received as such was Alberic, bishop of Ostia, who held a council here 1138. The fourth legate was Henry, bishop of Winchester, whose commission was given him by Innocent II., 1139. Mr. Johnson, therefore, seems to be mistaken in making John de Crema legate here after Abp. Corboyl, and Alberic after Henry, bishop of Winchester." MS. note, Wrangham. Mr. Johnson's statement must also be referred to England after the Conquest; as legates and legatine canons were received at Cealchythe A D. 785. See vol. i. of this work, pp. 264, sqq.]

† [MS. note, Wrangham substitutes Celestine II. for Lucius.]

## A.D. MCLXIV.

### PREFACE. ARTICLES OF CLARENDON.

After Theobald had sat twenty-two years, Thomas Becket, King Henry the Second's chancellor, was elected by the monks of Christ Church, and accepted, and declared by the bishops of the province. This was done in a kind of parliamentary assembly, 1161. In the year 1163 he and four of his suffragans, with four abbots, by the king's leave went to the synod of Tours, (to which also Thurstan of York sent his abbot of Fountain,) where Pope Alexander the Third, and seventeen of his cardinals were personally present: the archbishop came home soothed with the favours of the pope (who gave him a chair at his own right hand) and warmed with a speech made by Arnulph, bishop of Lysieux, in behalf of the liberties of the Church; from this time forward would not pay that submission to the civil courts which he had done before. Hereupon the king calls all the archbishops and bishops to Westminster, and the main point proposed to them was, whether they would observe the ancient customs of the kingdom, or rather the customs used in the time of the king's grandfather, King Henry the First, (for they were called *avitæ consuetudines,*) [and] they promised to do it, saving their order. This did not satisfy the king, whose indignation they feared; therefore Becket goes to him at Woodstock, and promised he would comply without adding any such salvo: the king required that this promise should solemnly be made before all the great men of the kingdom, and therefore called an assembly of them to Clarendon: there the archbishops and bishops did accordingly swear to observe these customs. But when afterwards these customs were drawn in the following form, and they were required to set their seals to them, the archbishop absolutely

and finally refused it, and retired beyond sea, and found protection in France and Italy, and from thence fulminated his anathemas against the king and his adherents, and raised a violent storm in the English Church; for which his monks of Canterbury and all his kindred were most cruelly treated, and he himself, soon after that was over, perished in the calm. The principal cause of all these commotions, were the three books of decrees which Gratian was compiling under the direction of Pope Eugenius the Third, who made Henry of Winchester his legate here, and excommunicated King Stephen for his harsh treatment of Archbishop Theobald. These decrees were afterwards published by that pope, and publicly read in the universities. Theobald sent Thomas Becket, while he was his chaplain, to Bononia, on purpose to be well instructed in this new learning.

## A.D. MCLXIV.

### ARTICLES OF CLARENDON.

*This was clearly a Parliamentary Assembly.*

LATIN. Sir H. Spelman, vol. ii. p. 63. [Wilkins, vol. i. p. 435*.]

AT a council holden at Clarendon in the presence of King Henry the Second, in which John of Oxford, the king's chaplain, presided by order of the king, a recognition was made of the customs and liberties of the king's ancestors (particularly of his grandfather Henry the First) by the archbishops, bishops, abbots, earls, barons, and great men of the kingdom, and which ought to be observed by reason of the disputes which often happen between the clergy and the justices of the king and of the great men. The [a]articles here follow.

[a] It may not be improper to observe, that one half of the inconveniencies which these articles were intended to cure, and of the disputes which now grew between the ecclesiastical and secular powers, took their rise from the separation made by William the Conqueror between the two jurisdictions.

1, 15. For there could be no just objection either from the clergy or laity against trying causes of the right of patronage or of debt in a court where both the bishop and the king's chief officer in the law sat as judges.

3, 9. Clergymen had no reason to decline the temporal court while their ordinary sat there together with the civil judge; nor was there occasion for them to appear in two several courts to answer for the same fact.

5, 6, 10, 13. Ordinaries could have no pretence for accusing men upon hearsay, or for taking security of excommunicates for their future good behaviour, nor want means to bring witnesses to testify against great offenders, or to have any delinquent made to appear before them, while they had the countenance and assistance of the chief civil magistrate under the king to draw all offenders to justice that could be found, and all that could be thought conscious to testify against them.

The second complaint took its rise from the new Norman practice of impropriating benefices. By their new tenure, prelates were made liable

* ["Ex Mat. Paris in ann."]

to new secular services unknown to their predecessors, which occasioned the eleventh article. This gave the king a handle rigidly to insist on the homage to be done to him for their temporalties, and to the guardianship of the said temporalties in a vacancy, which caused great mischief to their lands and tenants; and to his overruling the elections, all which are touched in the twelfth article.

Other inconveniencies, against which the king endeavoured to guard himself, were appeals to Rome, introduced in the last reign by Henry of Winchester. This he designed to prevent by article the fourth and eighth: and in the next place as to ordaining slaves without consent of their lords, this was a corruption of the Norman bishops condemned in all ages of the Church. But as to this point it is but just hinted in the sixteenth article. The protecting the goods of felons and the persons of felonious clergymen (against the first whereof the king declares in the fourteenth article; against the latter he would have made a seventeenth article, if he could have got Becket's consent) were certainly proofs that the bishops were now earnestly contending to make God's house a den of thieves. The seventh article, which exempts courtiers from being excommunicate without the king's consent, shews that this wise prince did not think such bishops as these fit to reform his peers and family. He would never else have protected his servants against the wholesome discipline of primitive pastors.

1. If controversy arise concerning the patronage of churches, either between laymen, or between laymen and clergymen, or between clergymen, let it be tried and determined in the king's court.

2. Churches belonging to the fee of our lord the king cannot be impropriated without his grant.

3. Clergymen being accused of any matter, upon summons from the king's judge, are to come to make answer there to whatever the king's court shall think fit; and likewise to the ecclesiastical, to make answer to whatever shall be there thought fit; but so, that the king's justice may send to the court of holy Church, to see how matters are there carried; and if a clerk be convicted, or confess, the Church ought not any longer to protect him.

4. It is not allowed to archbishops, bishops, and parsons, to depart the kingdom without the king's licence; and if they do, they shall give the king security, if he so pleases, that they will procure no evil to the king or kingdom, in going, returning, or staying.

5. Excommunicates ought not to give security, or to make oath [b]for the remainder, but only to give security and pledge

for standing to the judgment of the Church, that they may be absolved*.

[b] That is, I conceive, for ever after. Ordinaries, it should seem, were not content to take oath, or other security of offenders to stand to the judgment of the Church as to the penance to be imposed for the crime for which they were now impleaded, but demanded some pledge or security that they would never after be guilty of obstinacy. This is what the article forbids. By this it is evident that criminals were now absolved before they had done penance ; for the security was given for this doing penance after they were absolved.

6. Laymen ought not to be accused but by certain lawful men and witnesses, in the presence of the bishop (yet so as that the archdeacon do not lose his right, nor any thing accruing to him thereby). If they who are suspected be such as no one will or dare accuse, the sheriff at the bishop's request shall cause twelve lawful men of the [c]vicinage†, or village, to take their oaths, that they will discover the truth according to their conscience.

[c] Here is a word wanting in Sir H. Spelman, it is *de insuero, Binius* ‡, perhaps it ought to be *vicineto*. So Somner read it.

7. That none of those who hold of the king *in capite*, nor the officers upon his demesnes be excommunicate, nor any of their estates laid under an interdict, till application have been made to our lord the king, if he be in the kingdom; or if he be not in the kingdom, to his justice, that he may deal with him according to right; and so what belongs to the king's court be there determined, and what belongs to the ecclesiastical court be there determined.

8. If appeals arise, they ought to proceed from the archdeacon to the bishop, from the bishop to the archbishop, and lastly, to the king, (if the archbishop fail in doing justice,) so that the controversy be ended in the [d]archbishop's court by a precept from the king, and so that it go no farther without the king's consent.

* [V. Excommunicati non debent dare vadium ad remanentiam, nec præstare juramentum, sed tantum vadium et plegium standi judicio ecclesiæ, ut absolvantur. W. Spelman *reads* ubi absolvuntur. Probably 'remanentia' means 'residence;' see Ducange, Glossarium et Supplement.]

† ["In Matth. Paris. erat *insuero*, quam vocem in variantibus lectionibus ad calcem operis legere monemur *visneto* vel viceneto pro vicinia, ex qua xii. juratores in assisis eligebantur." W. p. 435, note †.]

‡ [Binii Concilia, tom. iii. part. 2. p. 1343. ed. Colon. 1606; ex Matth. Paris.]

[d] So of old the Christian emperors used to grant a second hearing (to such as thought themselves wronged by a former sentence) before bishops assigned by himself: and this is much more agreeable to the primitive scheme, than for kings to assume to themselves the determining of ecclesiastical causes, or assigning a court of delegates, half of the clergy, half of the laity. Vide Can. Ant. 12 *. When the Church assumed the cognisance of seculâr matters, no wonder that the king meddled with causes ecclesiastical.

9. If a challenge arise between a clerk and layman, or *vice versa,* concerning any estate which the clerk would have to be held in frank-almoin and the layman to be a lay fee, it shall be determined by the award of twelve lawful men before the king's justice, whether the estate be in frank-almoin or in lay fee. 'If the award be that it is in frank-almoin, the plea shall be in the ecclesiastical court; but if in lay fee, [e] then unless both claim their tenure under the same bishop or baron, the plea shall be in the king's court; but if both claim under the same lord of the fee, the plea shall be in his court; but so that on the account of such recognition, he that was first seised of any city, castle, borough, or royal manor, shall not lose his seisin †.

[e] Somner, whom I follow, thus reads this part of the article; *Nisi ambo tenementum de episcopo eodem vel barone advocaverint, erit placitum in curia regis, sed si uterque advocaverit de feodo illo eundem episcopum vel baronem,* &c., as in Spelman.

10. If one that is cited for any crime, for which he ought to make answer to the [f] archdeacon or bishop and will not make satisfaction upon their summons, they may lawfully put him under [g] interdict; but they ought not to [h] excommunicate him till application hath been made to the king's chief officer of the vill, that he may by law bring him to satisfaction. If the officer fail he shall be fined at the king's pleasure, and from that time the bishop may proceed against him by the law ecclesiastical ‡.

* [A.D. 341. Concil., tom. ii. p. 1314.]

'† [Et si recognitum fuerit ad eleemosynam pertinere, placitum erit in curia ecclesiastica; si vero ad laicum feudum, nisi ambo tenementum de eodem episcopo vel barone advocaverint, erit placitum in curia regis; sed si uterque advocaverit de feudo illo eundem episcopum vel baronem, erit placitum in curia ipsius, ita quod propter factam recognitionem saisinam non amittat, qui prius fuerat saisitus, donec per placitum dirationatum fuerit.]

‡ [X. Qui de civitate vel castello, vel burgo, vel dominico manerio regis fuerit, si ab archidiacono vel episcopo super aliquo delicto citatus fuerit, unde debeat eis respondere, et

[f] From this it appears that archdeacons were now allowed a jurisdiction, though it appears by the sixth article, that in criminous cases the information was to be made to the bishop himself, he at least was in person to hear the depositions of the witnesses. For it was justly supposed that his presence rendered the oaths more full of awe and solemnity. Probably the archdeacons did now in other parts of the proceedings, perform the office of judges in ecclesiastical causes. Officials were not yet in use; yet Archbishop Becket soon after this, mentions one Robert, vicar to Gilbert, archdeacon of Canterbury, both which he had excommunicated. Sir H. Spelman, vol. ii. p. 80.

[g] That is, probably, suspend him from entrance into the church; the greatest part of offenders were liable to no other interdict.

[h] This king and his counsellors were of the same sentiment with our late convocations, that excommunication ought not hastily to be passed in case of contumacy, but some other legal method be provided to bring the party to reason. In truth this article goes farther than our late convocations. For in criminous cases, excommunication for contumacy in not appearing was not intended to be prevented by the late plan published by Bishop Gibson *, as it is here by the king and his council.

11. Archbishops and bishops, and all the [i]parsons of the kingdom, who hold of the king *in capite*, are to look on their estates as baronies, and on that account to be responsible to our justices and officers, and to execute and perform all royal customs, and ought as other barons, to be present at judicial proceedings in the king's court, till they come to deprivation of life or member.

[i] In this age, the word parson was first used for one in holy orders; but my reader will observe, that it signified a clergyman of note or eminence, as appears by these articles; yet sometimes it was given to inferior priests.

12. When an archbishopric, bishopric, abbacy, or priory is vacant, it ought to be in the king's hand, and he shall receive all the rents and issues as of his own demesnes: and when the Church is to be provided for, the king is to send his mandate to the chief parsons of that Church, and the

ad citationes eorum noluerit satisfacere, bene licebit eis sub interdicto ponere eum, sed non debent ipsum excommunicare priusquam capitalis minister regis villæ illius conveniatur, ut justitiet eum ad satisfactionem venire. Et si minister regis inde defecerit, erit in misericordia regis, et exinde poterit episcopum ipsum accusatum ecclesiastica justitia coercere. W. In Spelman the last clause is, Et exinde poterit episcop. ipsum accusatum ecclesiastica justitia coercere. Doubtless the word should be 'episcopus,' agreeably with Johnson's translation.]

* [Codex Juris Eccl. Angl., tit. xlvi. c. 6. p. 1059; ed. Oxon. 1761.]

election ought to be made in the king's chapel, and by the advice of the king's parsons whom he shall call for this purpose; and the elect shall do homage and fealty to the king, as to his liege lord, for his life and members and earthly honour, (with a saving to his order,) before he be consecrated.

13. If any great men of the kingdom do violently oppose the archbishop, bishop, or archdeacon in doing justice to himself and in things that properly belong to him, the king ought to vindicate him; and if any one oppose our lord the king in his right, the archbishops, bishops, and archdeacons, ought to compel him by their law, to make satisfaction to the king.

14. The chattels of those who have committed capital crimes are not to be kept in the church or churchyard against the king's justices; for they are the king's, whether in the church or out of it.

15. Pleas of debt are in the king's cognizance, whether due upon [k] faith given or not.

[k] That is, upon solemn promise or oath; for in such cases the ecclesiastical judges claimed the cognizance of the debt, as will hereafter appear *.

16. The [1] sons of tenants in villainage, ought not to be ordained without consent of the lord on whose lands they were born.

[1] The reason is evident, viz., because these were deemed a part of the stock belonging to the land, and by ordaining such a one the landlord lost a slave; for when he was once ordained no man dared strike him under pain of excommunication. The primitive Church did not allow slaves to be ordained without consent of their masters, because they would not otherwise have been at liberty to attend the offices of the Church. See Can. Apost. 73 †, &c.

The king also decreed that bishops should degrade clerks in presence of the king's justice, whom they had found guilty of any public crime, and then deliver them to the

* [Compare Laws of K. Alfred, A. D. 877. 1, vol. i. p. 318, and note ‡.]
† [al. can. 81. Concil., tom. i. p. 46.]

king's court to be punished. On the other side, the archbishop thought that when they were degraded, they should not be punished by a lay hand, because [m] this seems to be a double punishment for a single crime.

[m] It is true this reason is given in some ancient canons, why clergymen should not be both deprived and excommunicated for the same crime; but not as a reason why he that has committed a crime deserving death by the civil laws should not suffer as well as others. The occasion of the king's offering this article was as follows; Philip de Broc, canon of Bedford, had committed murder, and being brought before the king's justice for it, instead of humbling himself he insulted the judge; yet the king could not prevail on the council to pass this article, but was content to see him deprived of his canonry and banished for two years. I cannot but upon this occasion declare my sentiment, that a clergyman notoriously guilty of any capital crime, is so far from having any title to any peculiar mercy, that he deserves, if it were possible, doubly to die for it. While the lives of murderers were generally ransomed by a weregild, and this practice settled by law, and therefore few were executed for this crime, it did not seem a grievance that clerks guilty of murder were not put to death but only condemned to penance during life in the bishop's prison or in some monastery: for the lay murderer by paying his weregild was dismissed without any such violent penance. But now since laymen lost their lives for murder, it justly appeared a grievance that orders should protect men in their crimes. I know not when murder was first punished universally with death, but it seems most probable that this practice first prevailed toward the latter part of King Henry the First's reign, and was therefore now of about forty years' standing.

[Postscript.] Becket, archbishop of Canterbury, never approved these articles, and thereby incurred the king's displeasure, and consulted his own safety by living abroad for seven years. And though he returned to Canterbury at the end of this term, yet the king shewed him no countenance, and he was killed by four armed courtiers as he was performing his devotions at the altar of the Blessed Virgin in his own church. A year or two after the king calls a council at London, where the monks of Canterbury appeared, and chose Robert, abbot of Bec in Normandy, for their archbishop, and though the provincial bishops consented to the election, yet Robert, with a primitive piety, refused to accept it; upon which they proceeded to choose Richard formerly a monk of Canterbury, then prior of Dover. And at the same time in presence of the council, the pope's letters for

canonizing Becket, and keeping a festival in honour to him, were publicly read. This archbishop constituted three archdeacons in his diocese, which of old had, and now hath but one; yet some say it was Baldwin did this. Albertus and Theodine, two cardinals, came from Rome to enquire into this murder, and the [n]king hearing that they were arrived in Normandy, immediately crossed the seas from Ireland to England, and at the place appointed by the cardinal legates, did publicly by oath upon the relics of certain saints, and on the gospels, purge himself from the imputation of having commanded those four men to kill the archbishop; nay, he declared himself much afflicted for his death: but because he apprehended that the indignation which he had expressed against Becket might give occasion to those assassins to commit the bloody fact; and because those malefactors had escaped from justice, (though others say that by the law as it then stood, the murderer of a priest was privileged from suffering death, which yet scarce seems credible,) therefore he swore to perform the following satisfaction before he was absolved, viz., 1. That he would not withdraw his obedience from Pope Alexander and his successors, (for the king had threatened formerly to join with Victor the antipope,) so long as he was treated like a catholic prince. 2. That appeals might be made from England to the see of Rome, so that if the king had any suspicion of the appellors, he might cause them to swear that they meant no hurt to him or his kingdom. 3. That he would for three years wear the cross, and go to Jerusalem to fight for the Holy Land, beginning next summer, except the pope dispensed with him; but his expedition might be deferred for so long a time as he thought fit, to fight against the Saracens in Spain. 4. That he should give so much money to the templars as they should think sufficient to maintain two hundred men to defend the Holy Land for one year. 5. That he should pardon and call home all that were banished on account of Archbishop Becket, and restore all things taken from the monks of Canterbury, and make them in as good condition as they were the year before that archbishop left England. 6. That he would give up all the customs against the Church introduced in his time.

[n] King Henry II. upon this and other occasions paid a great deference to the pope, yet it is evident he did it not out of blind obedience, but for other prudential reasons, as appears by his speech to Hilary bishop of Chichester; for when that prelate was magnifying the pope's authority, "You argue," says the king, "with much sophistry for the power of the pope, which was granted him by men, against the royal dignity given to me by God." See Spelman, vol. ii. pp. 57, 58 *.

* [Wilkins, vol. i. p. 431.]

## A.D. MCLXXV.

### ARCHBISHOP RICHARD'S CANONS.

Richard, successor to Thomas Becket in the archbishopric of Canterbury, with eleven English bishops beside himself, and the bishop of St. David's, and four abbots, being together in London, there celebrated a provincial council. King Henry the Second being just returned from Normandy with his son Henry, who was crowned king by his father's order, they were both of them present in the assembly, and consented to what was done.

The archbishop opened the synod by intimating that he rather chose to adhere to the rules of the [a] fathers than to make new ones, and that he had thought fit to have certain heads published and observed by those of his province; and that they who opposed the statutes of this synod were to be deemed transgressors of the sacred canons.

Latin. Sir H. Spelman, vol. ii. p. 103. [Wilkins, vol. i. p. 476*.]

[a] Every one of the following canons except the sixth and ninth, is attributed to some pope or council, but they seem to have been transcribed with great latitude or negligence: the first, for instance, is said to be Alexander the Third's, who was at that present pope, and eagerly espoused by our king and Church, in opposition to Victor, who was his rival: and Roger, to whom this epistle is said to be written, did at this time sit in the see of Worcester, and was present in this synod, and there are several letters in the Corp. Jur. Can. directed to our English bishops on this head, and one in particular to the bishop of Worcester, (Decretal. Greg. IX. lib. i. tit. 17. c. 4,) but in words quite different from those here cited: the same may be said of most of the other canons; therefore I have not been so punctilious as to refer my reader to them, unless in some special cases. See Const. of Richard Wethershed, A.D. 1229.

* [Concilium Westmonasteriense habitum die dominica ante ascensionem Domini anno gratiæ MCLXXV. præsidente eidem Richardo, Cantuariensi archiepiscopo, et convocato suæ provinciæ clero. "Ex MS. Benedicti abbatis, citante Spelmann. Vid. etiam R. Hoved. in hoc anno." Wilkins also gives variations from MS. Lambeth. n. 17, and MS. Eliense, n. 235.]

1. *From the decretal epistle of Pope Alexander the Third, to Roger bishop of Worcester.*

If any priest or clerk in [b]holy orders, that has a benefice, publicly keeps a concubine, and does not dismiss her upon a third admonition, let him be deprived of office and benefice: any under subdeacons must keep their wives, if they are married; except by mutual consent they choose to be [c]religious: but they are not to be beneficed if they live with their wives. But they who have married since they were subdeacons are to leave their women whether they consent or not*. And [d]let not sons be instituted into their fathers' benefices, unless some one succeed between them.

[b] That is, subdeacon or any order above that: for the other orders were inferior.

[c] That is, monks, or recluses; *qui ad conversionem* (not *conversationem*) *veniunt*. Somner.

[d] Yet Clement the Third in the year 1189 allowed all sons of clergymen lawfully begotten to succeed their fathers. His decretal is extant in the first book. Tit. 17. c. 12.

2. *From the third council of Carthage* †.

Let not clerks in [*vide supra* b] holy orders go to eat and drink in taverns, nor be present at drinking bouts, unless in their travels. Let the offender desist, or be deposed.

3. *From the third council of Toledo* ‡.

Let not a man in [*vide supra* b] holy orders be concerned in judgments concerning blood; nor by himself, nor by any other, inflict deprivation of member. Let the offender be deprived of office and place. We threaten anathema to that priest who takes the office of sheriff or reeve.

4. *From the council of Agde* §.

Clerks that wear long hair are to be clipped by the arch-

* [So much is given as a constitution of Archbishop Richard in Lyndwood's text, Provinciale, p. 128. Cf. Concilia, tom. xxi. col. 1088.]

† [See Conc. Carthag. III. A.D. 398. can. 27. Concilia, tom. iii. col. 884.]

‡ [See Conc. Tolet. XI. A.D. 675. can. 6. Ibid., tom. xi. col. 141.]

§ [See Conc. Agathens. A.D. 506. can. 20. Ibid., tom. viii. col. 328.]

deacon even against their will. Nor may they use any clothes or shoes but what are decent. He that does not mend upon admonition, let him be subject to excommunication.

5. *From divers decrees of Urban, Innocent, the councils of Chalcedon and Carthage.*

Because clerks for their ignorance, incontinence, defect of birth, title or age, despairing of [higher] orders from their own bishops, procure, or pretend themselves to be ordained by foreign bishops, and so bring seals unknown to their own diocesans; we therefore annul their orders, forbidding with the terror of anathema, any to admit them to the exercise of their function. Let any bishop of our jurisdiction, who knowingly ordains or receives such a clerk, be suspended from conferring that order to which he thus admitted the foreigner, till he makes due satisfaction *.

6. *Item.*

Since the church of God ought to be a house of prayer, not a den of thieves, therefore we forbid under terror of anathema, all secular causes concerning blood and corporal punishment to be tried in churches or churchyards; for they are sanctuaries for the guilty, not courts of blood and cruelty.

7. *From the synod of Triburia, or Trevur* †.

The holy synod detests simoniacal heresy, and ordains that nothing be demanded for orders, chrism, baptism, extreme unction, burial, communion, nor the dedication of a church; but that what is freely received be freely given; let the offender be anathema.

8. *From the decree of Urban the pope* ‡.

Let no prelate exact, or take by way of bargain, any price

* [Cf. Lyndwood, Provinciale, p. 32.]

† [See Conc. Tribur. A.D. 895. can. 16. Concil., tom. xviii. col. 140.]

‡ [Epist. Urbani P. II. (A.D. 1087.) ad Madelmum. Ibid., tom. xx. col. 700.]

for the reception of any monk, canon, or nun, who enters into a religious life. If any do, let him be anathema.

9. *A new decree.*

[Lynd., p. 281.] Let none transfer a church to another, in the name of a [e]portion, or take any money or covenanted gain for the presentation of any one. He that is guilty by conviction or confession is for ever deprived of the patronage of that church by the king's authority and ours.

[e] That is, as a portion from a father or grandfather to his son or grandson.

10. *From the decrees of divers fathers.*

We forbid under terror of anathema monks or clerks to trade for gain, and monks to hire farms either of clerks or laymen, and laymen to take ecclesiastical benefices to farm.

11. *From the council of Meaux* *.

Let none that would appear to be clerks wear or bear arms, but make their manners and clothes suitable to their profession, or else be degraded as despisers of the canons and of ecclesiastical authority; for none can be a soldier to God and the world at once.

12. *From the decree of Pope Alexander the Third, sent to the bishop of Norwich* †.

If vicars in contempt of the faith and oath made to the parsons lift themselves up against them, assuming to themselves a parsonage, and be legally convicted of it or confess it; let them no longer be allowed to officiate in the same bishopric.

13. *From the council of Rouen* ‡.

All tithes of land are the Lord's. Let all, who are unwill-

* [See Conc. Meldense, A.D. 845. can. 37. Conc., tom. xiv. col. 827.]

† [See Conc. Lateran. III. A.D. 1179. Append., pars xxxix. c. 4. Ibid., tom. xxii. col. 398.]

‡ [See Concil. D. Walteri Rotomag. A.D. 1189. can. 23. Ibid., col. 585.]

ing to pay them be thrice admonished, according to the precept of the pope, to yield the tithe of grain, wine, fruits of trees, young animals, wool, lamb, butter, cheese, flax, hemp, and whatever is yearly renewed, and be laid under anathema if they do not amend. Let the imperial sanction check the audacious by condemning them in cost, and by other means.

Agreeably to the sacred institutes we charge that in suits between clerks concerning pecuniary matters, he that is cast be condemned in cost; I leave him that is insolvent to be punished at the bishop's discretion.

### 14. *From the decree of P. Pelagius* *.

But [f]ten prefaces are found in the sacred catalogue, one for Low Sunday, a second for Ascension day, a third for Pentecost, a fourth for Christmas day, a fifth for the apparition of our Lord, a sixth for the Apostles, a seventh for the Holy Trinity, an eighth for the Cross, a ninth for Lent fast only, a tenth for the Blessed Virgin. By authority of this decree and of Pope Alexander we forbid any more to be added.

[f] There are but nine prefaces mentioned in the decretal of P. Pelagius, distinct. i. de consecr. c. 71†; that for the Blessed Virgin is there omitted. From this we may learn that the superstitious worship of the Virgin was not ripened till about this age.

### 15. *From the decree of Pope Julius* ‡.

We forbid the Eucharist to be sopped, as if the Communion were by this means more entirely administered. Christ gave a sop only to that disciple whom He pointed out for a traitor, and that not to denote the institution of this sacrament.

### 16. *From the council of Rheims* §.

We charge that the Eucharist be not consecrated in any [Lynd., p. 234.]

* [Pelag. P. II. A.D. 578. Epist. ix. ad Episc. Germ. et Gall. Ibid., tom. ix. col. 905.]

† [The tenth preface was added under Pope Urban II. at the council of Placentia, A.D. 1095. Concil., tom. xx. col. 807. See Corp. Jur. Can., cf. distinct. lxx. c. 2. annot.]

‡ [See Decreta Julii P. I. (A.D. 335.) juxta Gratianum. Conc., tom. ii. col. 1268. ap. Gratiani Decr. de Consecr. d. ii. 'cum omne.']

§ [Canones additi Conc. Rhem. I. (cir. A.D. 630.) ex Burchard., &c. Ibid., tom. x. col. 603.]

chalice not made of gold or silver; and that no bishop bless a chalice of [g]tin.

[g] Yet this canon as it now standeth in the *Corpus Juris Canonici* allows tin, though not brass, to poor churches. See de Consecr. distinct. i. c. 45*.

17. *From the decrees of Pope Ormisdas* †.

Let no faithful man, of what degree soever, marry in private, but in public, by receiving the priest's benediction. If any priest be discovered to have married any in private let him be suspended from his office for three years.

18. *From the decrees of Pope Nicolas* ‡.

Marriage is null without consent of both parties; they who marry boys and girls do nothing unless both consent after they come to age of discretion: therefore we forbid the conjunction of those who have not both attained the legal and canonical age, unless there be an urgent necessity for the good of peace.

[Post-script.] Roger, archbishop of York, would not be present at this council; but by some of his clergy that were there, claimed the right of having his cross borne before him in the province of Canterbury; they claimed also the dioceses of Lincoln, Chester, Worcester, and Hereford, as limbs of the province of York. And because these claims were not allowed in the council they appealed to the see of Rome: as also because their complaint against the archbishop of Canterbury for cursing the clergy of St. Oswald in Gloucester (because they would not submit to him as their metropolitan) was rejected.

[Addenda.] [The bishops of Lincoln were of old patrons of the monasteries of St. Oswald, Gloucester, and of Selby in Yorkshire, by right of foundation, as I suppose §, (yet Hoveden calls the first a royal chapel, and therefore it

* [Compare in Johnson's former volume, Elfric's Canons, A.D. 957. 22. p. 397 †, and p. 406 †.]

† [Decret. Hormisd. P. (A.D. 514.) ex Gratiano desumpta, 2. Concil., tom. viii. col. 530.]

‡ [Decret. Nicolai P. I. (A.D. 858.) ex Gratiani volumine desumpta tit. xviii. de Matrimonio, can. 3. Ibid., tom. xv. col. 446.]

§ ["King William Rufus gave the patronage of this abbey to Thomas, the

might be a donation of some one of our kings to the bishop of Lincoln.) Thomas, archbishop of York, claimed the diocese of Lincoln, as a member of his province. And it appears from what hath been said, 1179, that Lincoln was part of the kingdom of Northumberland, when it was first erected into a diocese. Robert, then bishop of Lincoln, rather chose to give King William Rufus three thousand marks for his protection, and to yield to Thomas the two monasteries, or the chapel and monastery aforesaid, by way of composition, than to subject himself and his see to the archbishop of York: this was in the year 1094. But now Richard, archbishop of Canterbury, claimed the exercise of his metropolitical authority in St. Oswald's, and being opposed in his claim, he excommunicated the possessors, and so the cause was brought before the legate, who gave sentence for the archbishop of York. And by this and such like instances, we may see the use of legates in England, by which the pope gradually introduced the canon law.]

Farther, in this council the clergy of St. Asaph diocese desire that their bishop Godfrey might be restored to them. He had been driven by the fury of the Welsh to seek for bread here in England: and the king had given him the guardianship of the vacant abbey of Abingdon: and he now rather chose to continue there than to return to Wales; so another named Adam was by the archbishop consecrated to the see of St. Asaph.

In another council assembled at Winchester the same year the king endeavoured to reconcile the two archbishops; and so far prevailed, that they consented to refer their cause to the archbishop of Rouen, and some other French prelates: but neither did this prove an effectual cure.

The next year Cardinal Hugo, or Hugezun, was sent from Rome to determine these disputes; but he left it as he found it; only pronounced in favour of the archbishop of York as to his right to St. Oswald's in Gloucester. The articles of Clarendon were renewed also in a council holden at Northampton, at which this cardinal was present. And the king had there leave given him by the said cardinal to implead clergymen in temporal courts, if they presumed to kill or hunt any deer in his parks or forests: which the historians

first of that name, archbishop of York, and to his successors, along with the church of St. Oswald at Gloucester, in lieu of the jurisdiction which that archbishop claimed over Lindsey in Lincolnshire. — Dugdale, Monast. Angl. (under Selby), vol. iii. p. 485. ed. 1817.]

observe to be the first instance of laymen's authority over the clergy allowed by the see of Rome.

There was likewise another council bid at Westminster the same year by the same cardinal, at which there was a great appearance of prelates and clergy; but when Roger, archbishop of York, observed that the archbishop of Canterbury was placed at the right hand of the legate, and the left hand assigned to him, he thrust himself into the archbishop of Canterbury's lap; hereupon the servants of Canterbury, and even the bishops themselves (says Hoveden) assaulted York, threw him flat on the ground, trampled upon him, and rent his cope, at which the whole council broke up, the cardinal himself withdrew in great hurry and confusion, and they never came together again; the two archbishops venting their indignation against each other by complaints to the king and mutual appeals to the pope.

In a pacification made this year between the two kings of England and Scotland, one article was, that all Scotch bishops should be consecrated by the archbishop of York, and subject to him.

See here a very observable monument of the knight-errantry of this great king, and of his subjects both of the clergy and laity, both in the island of Great Britain and on the continent.

## A.D. MCLXXXVIII.

### KING HENRY THE SECOND'S CRUSADE.

LATIN. Sir H. Spelman, vol. ii. p. 117. [Wilkins, vol. i. p. 491*.]

THE king [Henry II.] had a conference with the king of France, the archbishops, bishops, earls, and barons of their kingdoms were there present. The archbishop of Tyre was there, who being filled with the spirit of wisdom, marvellously preached the word of God before the kings and princes, and converted their hearts to the taking of the cross; and they who were before enemies were on that day made friends by his preaching, and the divine co-operation, and received the cross from his hand, and at the same hour the sign of the cross appeared over them in heaven; at the seeing of which miracle great numbers crowded in to take the cross. And the said kings agreed upon a distinction for their own crosses and those of their nations; the king of France and his nation took red crosses, the king of England and his nation white ones, and Philip, earl of Flanders, with his nation green. And so every one went into his country to provide necessaries for himself and his voyage.

1. King Henry after his taking the cross went to Mans, where with the advice of his counsellors he ordained that every one should give the tenth of his income and moveables this year for the succour of the land belonging to Jerusalem, excepting the arms, and horses, and apparel of the knights, and the horses, books, vestments, clothes, and ecclesiastical [a] furniture of clerks†, and the precious stones both of clerks and laics; after an excommunication has been first published against every man in every parish by the archbishops, bishops, and arch-priests, who doth not pay the said tenth in the presence and with the privity of those who are con-

* ["Ex Rog. Hoved. in anno."]

† [Wilkins gives 'et omnimoda capella clericorum' within brackets, and adds in a note, *Rectius* clericorum capellanorum; this emendation is supported by a parallel passage in the next paragraph quoted below, p. 69.]

cerned and are to collect that money, (that is, a parish priest, the arch-priest, one templar, one hospitaller, a servant of the king, a clerk of the king, a servant and clerk of the baron, and a clerk of the bishop). And if any one pay less than he ought in their opinion, four or six lawful men shall be chosen out of that parish to declare upon oath what he ought to have paid, and then he must pay the deficiency. But clerks and knights who have taken the cross shall pay none of this tenth but out of their own [b] demain; and whatever is due to them from their tenants shall be collected by those before mentioned, and be wholly yielded to them for their own use.

[a] *Capella* does properly signify a cabinet for the keeping of holy relics, and in a larger sense any closet or chest for the repositing of any thing that is of value; from hence it came to signify a little church: for no church or chapel could ordinarily be consecrated without having the relics of some saint to be kept therein *.

[b] Demain properly signifies that part of the manor which the lord kept in his own hands, but sometimes it signifies any estate in immoveables.

2. But let the bishops by their letters cause it to be declared in every parish of their bishoprics on the day of the Nativity, and of St. Stephen and St. John, that every one have by him the tenth before taxed by the feast of the Purification of the Blessed Virgin Mary, and make lawful payment thereof on the day following before the persons aforesaid, at the place to which he shall be warned.

3. Farther it is ordained by our [c] lord the pope, that whatever clerk or laic takes the cross, he be freed and absolved by authority of God and the blessed apostles Peter and Paul from all the sins which he has repented of and confessed.

[c] See the beginning of indulgences. In the first attempt in the year 1184, he that contributed his just aid had only three years' indulgence granted him if he were under a penance of seven years, and so in proportion for penances of fewer years. Sir H. Spelman, p. 116. This seems the first instance of paying tenths.

4. [d] It is ordered also that all clerks, knights, and such as hold by serjeantry who undertake this expedition, shall have

* [Antiqui reges Franciæ ad bellum procedentes, capam beati Martini secum portabant, quæ sub quodam tentorio servabatur, quod ab ipsa capa dictum est capella.—Durandus, Rationale, lib. ii. c. 10. § 8.]

the tenths of their lands, and of their tenants, and shall pay nothing for themselves*.

[d] What is here omitted seems only a cautionary repetition of the first article, that all clerks, laics, who did not take the cross, should pay their tenth.

5. And it is ordered that no one do swear enormously, or play at dice, and that none after next Easter wear particoloured, [e] grisian, sable, or scarlet clothes, and that every one be content with two dishes; and that no man carry any woman in pilgrimage with him but what may walk on foot to wash his clothes, that is unsuspected; and that none wear cloth slashed or pinked.

[e] See 1138. 15. p. 45.

6. And it is ordered that whatever clerk or laic hath before his taking the cross pawned his rents, yet that he receive the entire product of this year, and that the creditor do again take the rents when this year is past, so that the rent which he receives be accounted for in paying of the debt, and that no use be paid for the debt while the debtor is in this pilgrimage.

7. And it is ordered that whatever clerks or laics go this pilgrimage may lawfully pawn their rents, whatever they be, from Easter, when they begin their voyage, for the term of three years, so that the creditors, whatever becomes of the debtors, may receive the whole profit of the rents which they have in pawn, from the said Easter for three whole years.

8. And it is ordered that whoever dies in the pilgrimage, he shall divide his money that he carries with him, by the advice of discreet men (who shall be assigned for this pur-

* [Johnson here omits a sentence before that which he translates and another after it; in the Latin the whole passage stands thus:

Dispositum est autem a regibus, et archiepiscopis, et episcopis, et aliis principibus terræ; quod omnes illi, tam clerici quam laici, qui hoc iter non arripient, decimas redituum, et mobilium suorum hujus anni, et omnium catallorum suorum tam in auro, quam in argento, et omnibus aliis dabunt, exceptis vestibus et libris, et vestimentis clericorum, capellanorum, et lapidibus pretiosis tam clericorum, quam laicorum, et exceptis equis, et armis, et vestibus militum ad usum proprii corporis pertinentibus. Dispositum est etiam, quod omnes clerici, milites, et servientes, qui hoc iter arripient, decimas terrarum suarum et hominum suorum habebunt, et nihil pro se dabunt. Burgenses vero et rustici, qui sine licentia dominorum suorum crucem acceperint, nihilominus decimas dabunt. W.]

pose) for the subsistence of his servants, and for the succour of the land belonging to Jerusalem, and for the relief of the poor. All the aforesaid particulars were ordained and ordered by Henry, king of England, in the presence of Richard his son, earl of Poictou, William, archbishop of Tours, Baldwin, archbishop of Canterbury, Walter, archbishop of Rouen, John, bishop of Evreux, Ralph, bishop of Angiers, R[egnauld], bishop of Mans, and M[aurice], bishop of Nantes; and in the presence of Hugo de Nunant, elect bishop of Chester*, and Lisard, elect of Siez, and of the barons of Angiers and Mans, and Tours in Mans.

These things being thus ordered, the king appointed his servants of the clergy and laity for the collecting the tenths aforesaid in all his countries beyond sea, and then crossed the sea, and landed at Winchelsey on Saturday, 3 kal. Feb. In the meantime, Baldwin, archbishop of Canterbury, coming into England before the king, consecrated Hugo de Nunant bishop of Coventry. Our lord the king, as soon as he was arrived in England, assembled a great council of bishops, abbots, earls, and barons, and many other clerks and laics, to Gaintington, where he caused all the aforesaid heads to be publicly recited, which he had before ordained concerning the taking of the cross. Which done, Baldwin, archbishop of Canterbury, and his vicar, Gilbert, bishop of Rochester, [f]marvellously preached the word of God and the mystery of the saving cross that day before the king and his princes; whereupon many of the clergy and laity took the cross. [g]And then our lord the king sent his servants, both clerks and laics, through every county of England, to collect the tenths according to the aforesaid ordinance made in his countries beyond sea. And he caused all of the richer sort to be called out of every city in England, as two hundred out of London, one hundred out of York, and out of other cities in proportion, and caused them all to be presented to him at times and places appointed, of whom he took the tenth of their moveables, according to the estimate of credible men who knew their incomes and moveables; if he found any rebellious, he put them into prison and chains till they paid the utmost farthing. In like man-

* [Hugonis de Nonant, Coventrensis electi, W.]

ner he dealt with the Jews in his country, by which he [h] raised an inestimable mass of money.

[f] [The archbishops of Canterbury for about eighty years claimed, and probably exercised, the same privilege in relation to the electing and granting the temporalties to the bishop of Rochester, that the king did in relation to other bishoprics: the monks of Canterbury would not allow that a bishop could be chose for Rochester in any place but in the chapter-house of Christ's Church, but the pope determined against this privilege of the archbishop and monks in the year 1238. During the time that the archbishop enjoyed this privilege, and probably from the time of Lanfranc, till a good while after, the point of election had been declared to be like that of other sees, the bishop of Rochester was styled vicar to the archbishop of Canterbury, and sometimes chaplain to the archbishop, or the province, as he of London was dean, he of Sarum precentor, he of Winchester chancellor. There is in the Textus Roffensis a memorial with this inscription, *Hæ sunt Consuetudines, quæ debentur a Domino Cantuar. Archiepiscopo, Episcopo Roffensi:* the same is published in Anglia Sacra, vol. i. p. 390, as from the customary of Rochester, and it imports "that the bishop of Rochester shall have twenty shillings a day while he travels at the archbishop's request, and while he exercises the episcopal office in the vacancy of the archbishopric; that it shall be at the archbishop's option, when the bishop of Rochester travels with him, whether to find him in all things necessary, or to entertain him, his clerks and officers, at his own table; but that in the evening the bishop shall have two good wax tapers, fourteen greater candles, twenty-five lesser, answering to the number of * twenty-five horses and men, (so I understand *equitaturarum*,) plenty of wine and beer, and five shillings every day for his family and horses. And that this bishop ought to supply the archbishop's absence in the consecration of kings as well as bishops, receiving the procuration aforesaid. This Gilbert (says the memorial) exercised this office while Archbishop Baldwin was absent in the holy war, and during the vacancy of the see, and received the procuration aforesaid.] [Addenda.]

* N.B. Textus Roffensis hath here XVV., but it is printed in Anglia Sacra XXV.

[g] [Giraldus Cambrensis says he attended the archbishop and his vicar when they went into South Wales on this occasion; that the archbishop's sermon at Haverford prevailed with very few to take the cross, but that when he himself preached (vain man) he drew abundance of tears from people of all ranks, and even from them that were most of all hardened against the enterprise, and brought men in crowds to take the cross; and that John, earl of Moreton (afterwards king) upbraided him for having drained the country of men that were able to bear arms for the defence of the king and people: yet he tells us he preached in Latin and French only, and spoke things rather than words, though he knew the English tongue and was a native of Wales. This I suppose he thought spiritual

preaching, for he would seem to renounce all self-complacency in his mighty performances, by saying the spirit bloweth where it listeth *.]

[h] One would think this great king must have been under the effects of old age (though he was but sixty-two) when he engaged with so much zeal in so fond an enterprise; yet it is evident there was something of discretion even in his dotage, if we compare his proceedings with those of his successors, for he did not let the pope or his creatures finger the money as they did.

Then he sent Hugh, bishop of Durham, to William, king of the Scots, for collecting the tenths in his country; upon the hearing whereof, the king of Scotland meets them at† ——————— and not suffering them to enter into his country for collecting the tenths, he offered to give to his lord, the king of England, five thousand marks for the tenths aforesaid, and for the recovering of his castles; but the king of England would not comply. Yet Philip, king of France, caused the tenths of the rents and moveables to be collected in the same manner from his subjects, through all his countries.

Yet King Henry after his submission to the pope's injunctions, upon the death of Becket, to go fight for three years against the Saracens, and the patriarch Heraclius's offering to him the Holy Land for his own dominion, upon condition he could get it; and after all these great preparations made for this voyage this year, and four years before, and even in the year 1181, did never take one step toward the Holy Land; for he was prevented by a sudden unsuccessful war with France, and the next year he died. His son, King Richard the First, had a flaming zeal for this cause, and the million and more of money which he is said (believe it who will) to have squeezed from his father's treasurer, nay, half of it, was at this time a sufficient fund for such an expedition, in conjunction with France and other Christian states; especially when it is considered that a great part of those that went with him did it at their own expense; I mean, it was sufficient to carry them thither. But perhaps all the

* [See Giraldus Cambrensis de rebus a se gestis, lib. ii. c. 18, in Wharton, Angl. Sac., tom. ii. p. 490.]

† [The Latin is, quo audito, Rex Scotiæ occurrit eis inter Were et Brigeham in Lœnas; et non permittens, &c. S. W. i. e. between Wark (in Northumberland) and Brigham (in Berwickshire) in Lothian.]

money in Europe was not sufficient to have maintained the war there for a considerable tract of time, and then to bring them home in case they were disappointed. But they went with a full assurance of victory and success, and never admitted such a supposition to enter into their breasts; which yet at last happened to be their case. The story is well known: the king was forced to come home over land in disguise, and was taken by the duke of Austria, and made prisoner, and the whole English nation, though they earnestly desired their king again, yet had been so exhausted by these levies, that they were hard put to it to raise the tenth part of what he is said to have had from his father's treasurer, to pay his ransom.

## A.D. MCXCV.

### PREFACE. HUBERT WALTER'S LEGATINE CANONS AT YORK.

Baldwin, archbishop of Canterbury, dying in this expedition, in which he followed the king, Hubert Walter succeeded him in the king's absence, and was, as his predecessor had been, legate to the pope, and likewise had the king's commission to act as chief justiciary (which was in effect viceroy) of England. He was a man that was very magnificent and generous in his expenses and public works, and had an immoderate affectation of secular power and grandeur. What follows seems a specimen of it.

The pope absolutely forbid him to continue to execute his justiciaryship, as contrary to the canons; he was forced to comply, and did actually resign it. But in a few years after, he took the chancellorship, as more consistent with his order, since in that court no cause of blood can be tried, which yet was below him, as archbishop of Canterbury.

It is strange how the archbishop of Canterbury could visit the province of York at this time, if what Giraldus Cambrensis in the life of Geoffry, says be true; viz., that this Geoffry before his consecration, which was 1191, received a privilege from the pope, by which his church and whole province were exempt from the jurisdiction of any legate but what was a cardinal, and sent *a latere* from Rome, the place of his residence*. For if Hubert was *a latere*, yet the other part of the character did not belong to him.

* [Giraldus Cambrensis de vita Galfridi Archiep. Ebor., lib. i. c. 12, in Wharton, Angl. Sac., tom. ii. p. 387.]

## A.D. MCXCV.

### HUBERT WALTER'S LEGATINE CANONS AT YORK.

LATIN. Sir H. Spelman, vol. ii. p. 121. [Wilkins, vol. i. p. 501 *.]

A COUNCIL celebrated at York for reforming the manners of that church, by Hubert, archbishop of Canterbury, legate of the apostolical see, anno Dom. 1185, and in the seventh of King Richard the First, the said legate came to York on the Lord's day, being the feast of the apostle S. Barnabas, and was received by the clergy in solemn procession, and introduced into the church of the cathedral see. On Monday he caused assizes *de novel disseisin*, and *de mort d'ancestre* and of all the pleas of the crown to be holden by his officers; but he and his [a]officials held pleas of [b]Christianity. On the Tuesday he proceeded to the abbey of St. Mary's, York, and there was received by the monks of the said church, in solemn procession. Then he went into the monks' chapter-house, and upon their complaint, that Robert their abbot, by reason of his weakness and bodily infirmities, was capable of doing no good to their house, he deposed him from his pastoral cure, and administration of the house, who made great outcries, and appealed to his lord the pope.

[a] Here we first meet with these canon-law judges. My reader will observe that this was a singular kind of synod. I mean a legatine diocesan. There was no bishop present, but the legate himself: yet by the seventeenth canon it seems plainly intended, that the constitutions should oblige the whole province.

[b] The jurisdiction of prelates, together with all their privileges, often passes under the name of Christianity, and the ecclesiastical court was called the court Christian.

On the following Wednesday and Thursday, having assembled together in the church of St. Peter at York, Simon, dean of the said church, and Hamo, precentor, and William

* ["Ex Rog. Hoved. in anno."]

Testard, and Geoffry de Muschamp, archdeacons of Nottingham and Cleveland, and John the chancellor, and Robert, provost of Beverley, with some canons of the same church, with almost all the abbots, priors, officials, deans, and parsons of the churches of the diocese of York; the legate himself sat in a chair aloft, and celebrated a most famous council, in which he ordained the underwritten decrees to be kept.

*The decrees of the said council of York.*

1. Whereas the salutary host hath a pre-eminence among the other sacraments of the Church, therefore the devotion of the priests ought to be more particularly employed upon it; that so it may be consecrated with humility, received with awe, administered with reverence. And let the minister of the altar be sure that bread and wine, and water, be furnished for the sacrifice: and let it not be celebrated without a lettered minister: and let care be taken that the host be reserved in a clean and decent pyx, and let it be renewed every Lord's day.

2. As often as the communion is to be given to the infirm let the priest in person carry the host in a clerical habit suitable to so great a sacrament, with a light going before it, unless the roughness of the weather, or the difficulty of the way or some other obstacle do not admit of it.

3. Because the [c]secret part of the mass is frequently corrupted through the mistake of the writers, or the oldness of the books, so that it cannot distinctly be read, let the archdeacons take great care that the canon of the mass be corrected according to some true and approved copy.

[c] That is, the canon. This third constitution is made up of part of the second, [and] part of the third in Sir H. Spelman. By which means here is one constitution in number more than in Sir H. Spelman *.

4. We forbid the priest, when a layman comes to him for

* [Wilkins begins the third constitution as Johnson, but includes in it the next two sentences, as Spelman, with whom he agrees in the numbers of the remaining constitutions as noted in the margin.]

penance, to enjoin him to cause masses to be celebrated [d]out of a covetous design. We have also by decree forbid the priest to [e]make a bargain for celebrating mass at a certain price; but that he take that only which is offered at the mass.

[d] That the confessor, or some other priest, might be paid for saying of those masses.

[e] Afterwards a certain sum was assigned for every mass said for any particular person or persons.

5. We ordain, that no more than two or three [f]take a child out of the sacred font*; two men, and one woman a male child; two women, and one man a female child. And when a child is found exposed, and it is not known that he has been baptized, let him be baptized, whether he be found with salt or without; for that cannot be said to be iterated which is not known to have been done before. [4. S. W.]

[f] This was formerly done by the sureties.

6. We have also decreed, that a deacon (unless in the most urgent necessity) do not baptize, or give the body of Christ, or enjoin penance at confession to any man, as being what antiquity decrees to belong properly to the sacerdotal order, according to the tenor of the canons of the fathers. We add under the same head, that whenever a priest is desired to baptize a child, or communicate an infirm person, he presume not to make delays. [5. S. W.]

7. Whereas nothing unseemly ought to be in the house of prayer, which is the house of God, we charge that parsons and vicars do take diligent care, according to the [g]pensions which belong to them, as reason directs, and approved custom requires, that churches which want reparations be repaired. [6. S. W.]

[g] It does not certainly appear whether these pensions are said to belong to the churches, or to the rectors and vicars: it seems most probable that the old canonical portion belonging to the fabric is here intended: rectors could not properly be said to have a pension, for the whole endowment was theirs: and if any thing was granted out of it, this was a pension.

* [See Legatine Canons at Cealchythe, A.D. 785. 2. vol. i. p. 267 †.]

[7. S. W.] 8. And let ministrations be performed with ornaments proper for them.

[8. S. W.] 9. Also let the sacrament of the Eucharist be consecrated in a silver chalice, where there is a sufficiency for it*. We have fixed a term for this ordinance; that is, [h]a year from the beginning of our legateship: and if these things be not executed in the meantime, we have decreed, that before the expiration of that term, our disposal of the incomes of the churches take full effect.

[h] Hubert Walter became archbishop in the year 1193, therefore near two years had expired since the beginning of his primacy, yet one year was not yet passed (by what is here said) from the beginning of his legateship, therefore we may safely conclude that the archbishop of Canterbury was not yet *legatus natus*, but had his legatine commission given him some time after his advancement to the metropolitical see. Thus much is I think clear from this constitution. But it must be owned that the consistency of it in other respects is not very clear.

[9. S. W.] 10. And we have ordained that clerks who have received the crown from the bishop do preserve their crown and tonsure; and if out of contempt they do it not, let them be compelled to it by deprivation of their benefices if they have any. Let them who have no benefices be clipped against their wills by the archdeacons or deans.

[10. S. W.] 11. We ordain also that priests go not in copes with sleeves, but in apparel suitable to their order, that as they are superior to others in dignity, so they may give them a more perfect scheme and pattern of decency.

[11. S. W.] 12. Since the Scripture testifies that he is blessed who withdraws his hand from accepting bribes, it is most carefully to be provided that justice be done gratis, and that no pay be taken for doing it, or laying it aside, or hastening, or delaying it in ecclesiastical cases; that so the just judge may reward a man according to his righteousness at the proper time.

[12. S. W.] 13. Since tithes are tributes, which ought by the law of God to be paid to needy souls, and to be paid without diminution, we ordain that due and accustomed tithes be yielded of such things as are yearly renewed in the most entire manner; so as they be in the first place paid to the church,

* [See vol. i. Ælfric's Canons, A.D. 957. 22, p. 397 †.]

and afterwards the wages of the harvesters, and of other servants, at the discretion of the payer, out of the nine parts.

14. The profession of religious sanctity, requires that monk canons regular, and nuns, make their conversation suitable to their names*: that therefore all opportunity of wandering may be taken away, we forbid them to take to farm such [i]places as are called obediences†, nor take any long travels, nor go out of their monasteries without some certain, reasonable cause, nor without such company [as is] of certain undoubted honesty. [13. S. W.]

[i] Latin, *redditus;* which commonly signifies rents, but at the foot of this council the dean and chapter of York claim the donation of the archdeaconry then in dispute, and of all *redditus* that are vacant in the church of York: there then *redditus* certainly signifies places, or offices, with the estates, and profits belonging to them. And it is well known that the offices of chamberlain, sacrist, cellarer, &c., in the great religious houses had commonly good estates belonging to them: the monks are here forbid to take these estates to farm: and these offices in monasteries were commonly called obediences.

15. We add with a special item, that nuns do not go out of the verge of their monastery, but in the company of their abbess or prioress. [14. S. W.]

16. And we forbid any layman to take a church or tithes to farm, either by himself alone, or in partnership with a clerk. [15. S. W.]

17. That the improbity of calumniators and the malice of false swearers, may be restrained by the fear of judgment from above, we charge that every priest do for the future thrice in the year, solemnly with candles lighted, and bells tinkling, excommunicate those who shall knowingly and wilfully forswear themselves, and those who maliciously cause others to forswear themselves in [k]recognitions, or other testimonies, and let him every Lord's day, denounce them excommunicate, that he may reclaim them from their iniquity by the frequent repetition of the curse, whom the accusation of their own conscience does not deter. But if they repent [16. S. W.]

* [13. Exigit professio religiosæ sanctitatis, ut monachi, et canonici regulares, et moniales religiose et regulariter conserventur. S. W.]

† [redditus quos obedientias vocant, S. W.]

of their perjury, let them be sent to the archbishop or bishop, or the general confessor of the diocese, in the absence of the archbishop or bishop, to receive penance from him. Penance is only to be intimated, not enjoined them, if they are dying. But they must be firmly charged that if they survive they go to the archbishop or bishop, or in their absence to the general confessor of the diocese, to receive penance.

[k] Verdicts given by jurymen most probably: for the use of juries began in the foregoing reign; and the reader will observe that these general excommunications began in this age. Before, this excommunication was passed on men unknown in order to discover them. Of this you have a form in Wanley's catalogue, transcribed from a book in CCCC marked S. 17, written by a Norman, but in the Saxon tongue. The form here follows: "By authority of Almighty God, Father, Son, and Holy Ghost, and St. Mary mother of our Lord, and St. Michael the archangel, and St. Peter the prime apostle, and St. Nicolas, and the blessed Augustine, and all Christ's saints, let the men be excommunicated and damned that committed this theft, that consented to it, or shared in it, or that have, or expect any part of it; and let them be separated from entering into holy Church[1], and from the fraternity of God's elect. Moreover let them have their portion and punishment with Judas our Lord's disciple[2], and with them that said to our Lord, Depart from us, we will not have the knowledge of Thy way; except they be converted, and betake themselves to satisfaction. Let them be accursed eating, and drinking; walking, and sitting; speaking, and holding their peace; waking, and sleeping; rowing, and riding; laughing, and weeping; in house, and in field; on water, and on land, in all places. Cursed be their head, and their (þeċan, *forte* throats) thoughts, their eyes, and their ears, their tongues, and their lips, their teeth, and their throats[3], their shoulders, and breasts, their feet, and their legs, their thighs, and their inwards; let them remain accursed from the bottom of the foot to the crown of the head, unless they bethink themselves, and come to satisfaction. And just as this candle is deprived of its present light: so let them be deprived of their souls in hell. Let all the people say, So be it, be it so*."

18. Because according to the Word of the Lord, if the priest offend he will cause the people to offend; and a wicked priest is the ruin of the people; therefore the eminence of their order requires that they abstain from public drinking bouts and taverns: and let not those who are under a vow of continence, give a loose to acts of uncleanness; therefore we forbid them to have concubines in their own houses, or access to such as they cast off, to evade our

[17. S. W.]

* [Wanley's Catalogue in Hickes's Thesaurus, vol. ii. p. 137; [1]gelaþunge, assembly; [2]belemeðan, betrayer; [3]ðrot-bollan, throat-pipe.]

constitution, in the houses of other men: if they persist in their filthiness, and the [1]deans by connivance, do not notify it to their prelates, let them be suspended from their office. And may those who, inflamed with zeal, do notify their excesses to their prelates, obtain the divine benediction. The punishment of those who publicly keep concubines shall be infamy, and an incapacity to give information or testimony. If they repent not for fear of this punishment, let them know that they are to be suspended from office and benefice.

[1] Probably deans rural.

19. Let him that is suspected of a crime upon common fame, or probable signs and tokens, be familiarly admonished once, twice, and thrice, by the dean of the place, to reform himself; which if he do not, let the dean reprove him in conjunction with two or three more, with whom he hath lost his reputation: if he cannot be reformed by these means, let him tell the Church; that is, let him be reproved in the chapter, that upon conviction or confession he may be canonically punished, or if he deny it and cannot be convicted, a canonical purgation may be enjoined him; so that [the compurgators] do not exceed the number twelve, and that more or fewer be accepted according to the quality and circumstances of the person and of the infamy, at the discretion of the judge: and let the purgation be admitted of the very first day in which the person defamed is ready to perform it, that so no money be extorted by the fear of vexation to be occasioned by delays. We have ordained these, and the above-written particulars, with a [m]saving in all respects to the honour and dignity of the holy Roman see. [18. S. W.]

[m] This archbishop proceeded with a singular deference to the see of Rome. He adds such a saving to the end of every constitution in his synod 1200. He was transported with the honour done him by the pope in making him legate. But he ought to have known that he was not the first archbishop of Canterbury that had holden a synod and visited in the diocese of York *. It had formerly been done, though without a pope's commission.

In this council Peter Dinant demanded full restitution to

* [Compare vol. i. p. 97. Bed. Hist. Eccl., lib. iv. c. 12.]

be made to him of the archdeaconry of the West Ri[di]ng *, which [n]Geoffrey the archbishop had given him, commanding the chapter of York that they should receive and instal him: to whom Simon the dean, with the chapter, answered, that the archbishop could not give that archdeaconry to any man, because he had delayed to give it beyond the time fixed in the [o]Lateran council, where [p]Pope Alexander III. ordained that when prebends, churches, or any offices in a church are vacant, they should not long hang in suspense, but be conferred within six months, on persons fit for the administration thereof. If the bishop delayed to confer what belonged to him, that the chapter should provide for it: that if the election belonged to the chapter, and they made none in six months, the bishop should do it with the advice of religious men. If all neglected it, that the metropolitan of the bishop should dispose of it, according to the Lord, maugre their contradiction. The said dean and chapter of York asserted that by authority of this disposition, and by privilege granted to the church of York by Pope Celestine III., the donation of the said archdeaconry, and of all places vacant in the church of York, which their archbishop had not conferred within the term fixed by the Lateran council, belonged to them. But the officials of the archbishop of York, Girard de Rowell and Honorius, appealed against the said privilege, and renewed the appeal which the lord archbishop had made at his recess, for the security of his church, before the legate and council. And though it was contained in the privilege, that appeals against it should be set aside, yet the legate shewed a regard to the appeal of the archbishop of York.

[n] This Geoffrey, the present archbishop of York, was the son of fair Rosamond. Baldwin, the archbishop of Canterbury, claimed the consecration of him when he was first nominated to the see by the king his brother, but he could not obtain it: for Geoffrey went to Tours to be consecrated. William Longchamp, bishop of Ely, and chief justiciary of England, treated him very severely at Dover, in the absence of King Richard, as he did many others. Pope Celestine cut the whole kingdom of Scotland off from his province A.D. 1191 †, and made it subject imme-

* [Westriding, W.]

† [It seems that this act should rather be attributed to Clement III., A.D. 1188. The same letter, Ad

diately to the see of Rome. And now the archbishop of Canterbury lords it over him in the remaining part of his jurisdiction. No wonder that he did not choose to be the eye-witness of it: but he was for the greatest part of his time by force absent from his see by reason of the jealousies between the king and him. Hubert Walter was dean of York when Geoffrey was elected archbishop, and refused to pronounce his election according to his office, pretending that the election fell upon himself; but he was forced to content himself with the see of Sarum till the archbishopric of Canterbury became vacant. It is evident that the old rivalry between Hubert and Geoffrey was one great occasion of the calamities which attended the latter even to his grave.

° Lat. council, 1179 *, under Alex. III. c. 8.

Wilielmum Regem Scotorum, on this subject, is given under the first year of each pontiff. See Concilia, tom. xxii. col. 548 et 613, and Mansi's note on the second place.]

* [Conc. Later. III. cap. 8; Concilia, tom. xxii. col. 222.]

## A.D. MCC.

### HUBERT WALTER'S CANONS AT WESTMINSTER.

LATIN. Sir H. Spelman, vol. ii. p. 123. [Wilkins, vol. i. p. 505*.]

HUBERT (Walter) archbishop of Canterbury, held a [a] general council at Westminster, notwithstanding the prohibition of Geoffrey, son of Peter, earl of Essex, then chief justiciary of England, in which council the following canons were made.

[a] That is, national.

1. Whereas an error in divine offices endangers both the souls and bodies of men, it is wholesomely provided by this council, that the words of the [b] canon be roundly and distinctly pronounced by every priest in celebrating [mass;] not curtailed by an hasty, or drawn out into an immoderate length by an affectedly slow pronunciation†. In like manner that the hours and all the offices be rehearsed plainly and distinctly without clipping or mangling the words: the offenders after these admonitions are to be suspended till they make just satisfaction. Saving in all things the honour and privilege of the holy Church of Rome.

[b] The canon, or secret part of the mass is from the end of *trisagium* to the end of the consecration.

2. A priest may not celebrate twice a day, unless the necessity be urgent. When he does, let nothing be poured into the chalice after the receiving of the blood at the first celebration; but let the least drops be diligently supped out of the chalice, and the fingers sucked or licked with the tongue, and washed, and the washings [c] kept in a clean

* ["Ex Rog. Hoved. in ann."]

† [The next sentence in the Latin is, Non est enim ibi diu immorandum propter insurgentes cogitationes; quæ, ut muscæ morientes, perdunt suavitatem unguenti. S. W.]

vessel to be had for this purpose; which washings are to be drunk after the second celebration; except a deacon or some other [d]considerable[1] minister be present to drink the washings at the first celebration. Farther, let the Eucharist be reserved in a clean decent pyx, and so carried to the [[d] *vide supra*] sick with a clean cloth laid over it, and a candle and cross before it, unless the sick man dwell at too great a distance. Let the host be renewed every Lord's day. And let there be a certain distinction between the consecrated and unconsecrated hosts, that the one be not taken for the other. Farther, let [e]the Eucharist be given in private to no impenitent person: but it is to be given in public to every one that earnestly repents; so that his crime be not notorious*. Saving, &c. [[1] honestus.]

[c] The priest was not now to drink the washings as in other masses; because this would have broken his fast, and unqualified him to say mass a second time.

[d] It was presumed that some particles of the sacramental blood remained in the washings, and that therefore none was fit to drink them without a particular preparation; but some deacon or priest: yet the constitutions of Richard, bishop of Sarum, allow any innocent person to drink them. Sir H. Spelman, p. 148 †.

[e] This is an obscure place and evidently corrupted; so is the parallel constitution of Richard, bishop of Durham, Sir H. Spelman, p. 173. I translate from the more just reading of Richard, bishop of Sarum, ibid., p. 148, misprinted for 150‡.

3. If there be any doubt whether one have been baptized, or confirmed, we charge according to the holy canons, that the sacrament of which there is a doubt, be conferred. Let

* [His adjiciendum decrevimus, ut secreto non detur communio eucharistiæ petenti, sed publice et instanter petenti danda est, nisi publicum sit ejus delictum. Wilkins, vol. i. p. 505; cf. Conc. Dunelm. Wilkins, vol. i. p. 579.]

† [Nisi forte in prima celebratione assit diaconus, vel alius minister honestus, vel innocens aliquis qui loturam illam sumere possit absque conscientiæ læsione. Spelman, vol. ii. p. 148. Cf. Wilkins, Conc. Dunelm., vol. i. p. 579. Conc. Prov. Scot., c. 59; ibid., p. 615.]

‡ [*Ne Eucharistia detur secretius.* Prohibemus etiam ne communio eucharistiæ detur secreto impœnitenti, cum publice et instanter pœnitenti danda sit; dummodo occultum fuerit ejus delictum. Const. Ric. Ep. Sarum. "Ex vet. cod. MS. in bibl. Collegii Corpus Christi Oxon." Spelman, vol. ii. p. 148. Wilkins omits this and much more of the constitutions of Richard, bishop of Sarum, as being almost word for word the same as the constitutions of Richard, bishop of Durham, which he gives vol. ii. p. 572—583, under the title "Concilium Dunelmense," ex MS. Dunelm. ecclesiæ, B. iv. 41. Cf. Wilkins, vol. i. p. 599. See note *.]

foundlings be baptized, whether laid with salt or without. Let none be held at confirmation by father or mother, or by father or mother-in-law. A deacon may not baptize, or give penance, but when the priest cannot, or will not, and yet death threatens the child or the sick man. If a layman baptize a child in case of necessity (and [f] even a father, or mother may do it without impeachment of matrimony) let all that follows after the immersion be performed by the priest*. Saving, &c.

[f] Some old canons have dissolved matrimony on account of the father's or mother's baptizing one of their children: for it was pretended, that by the father's baptizing the child a spiritual relation was contracted, which made any future conjunction with his own wife incestuous.

4. In administering penance we charge that priests, according to the canons, diligently consider the circumstances, the condition of the party, and of the sin; as also the time, place, and occasion; together with the backwardness or devotion of the penitent†. Let penance be so enjoined to the wife, that her husband may not suspect her of any heinous crime; and let the same be observed in relation to the husband. Let no priest presume to celebrate after a lapse, till he has confessed. And to cure the covetousness of priests let them not enjoin masses by way of penance, except to such as are themselves priests. Saving, &c.

5. We, following the decrees of the [g] Lateran council, which are the most famous of any that have been ordained by the modern fathers, 'do forbid archbishops to exceed the number [h] of forty or fifty men and horses, bishops the number of twenty or thirty in visiting parishes: let the archdeacon be content with five or seven, the deans under the bishops with two‡. And let them not make their progress with

* [sequentia immersionem non præcedentia per sacerdotem expleantur. S. W.]

† [IV. *De pœnitentia.* Cum pœnitentiæ, quæ est secunda tabula post naufragium, tanta major adhibenda sit circumspectio, quanto magis est necessaria post lapsum reparatio; nos sacrorum canonum statuta sequentes, præcipimus, ut sacerdotes in pœnitentia diligenter attendant circumstantias; qualitatem scilicet personæ, et quantitatem delicti, tempus, locum, causam, moram in peccato factam; devotionem animi pœnitentis, W.]

'‡ [decernimus, ut archiepiscopus parochias visitans, quadragesimum vel quinquagesimum evectionis numerum, episcopus vicesimum vel tricesimum nequaquam excedant; archidiaconus vero quinque aut septem; decani constituti sub episcopis, duobus equis contenti existant. W.]

hunting dogs or hawks; but like such as seek not their own, but the things of Christ. We forbid bishops to lay taxes on their subjects, but only to demand moderate aids of them when necessity requires them*. Let archdeacons and their deans presume to exact nothing of their priests or clerks. 'The abovesaid number of horses and men is tolerated in relation to rich places, in poor places moderation is to be observed: and they who formerly used a less number, are not to think their power greatly enlarged by this indulgence†. The design of visitation is to see to what concerns the cure of souls, and that every church have a silver chalice, a sufficiency of decent vestments for the priest, necessary books, and utensils, and whatever is necessary for the honour and dignity of the sacrament. For the cure of covetousness and negligence, by the authority of the council of Toledo, we charge that no visitor demand any procuration or money in lieu of it, of a church, where he hath not duly performed the office of visitation. Saving, &c.

[g] The later council under Pope Alexander III. is here meant, which was holden 1179 ‡. We have this constitution in Decretal, lib. iii. tit. 39, c. 6.

[h] A blessed reformation.

6. According to the [i] Lateran council, if any bishop ordain a priest or deacon without a title, let him maintain him till he can make a clerical provision for him in some church, except he be able to live of his own, or have a patrimony: and if the archdeacon without the special command of the bishop present a man to be ordained a subdeacon, and he be accordingly ordained without a title, let him be liable to the same penalty. Saving, &c.

[i] The Lateran council 1179, c. 5 §, is here meant.

* [Johnson *omits*, Cum enim dicit apostolus, "Non debent filii thesaurizare parentibus, sed parentes filiis;" multo longe a paterna pietate videtur, si præpositi subditis suis graves existant, quos in cunctis necessitatibus pastoris more debent fovere. S. W.]

† [sane quod de supradicto numero evectionis secundum tolerantiam dictum est, in illis locis poterit observari in quibus ampliores sunt reditus et ecclesiasticæ facultates. In pauperibus autem locis tantam volumus teneri mensuram, ut ex accessu majorum minores non debeant gravari, ne sub tali indulgentia illi, qui paucioribus equis uti solebant hactenus, plurimam tibi credant potestatem indultam. W.]

‡ [Conc. Later. III. cap. 12; Concilia, tom. xxii. col. 225.]

§ [Conc. Later. III. c. 5; ibid., col. 220.]

7. Following the decrees of the [k]Lateran council, we charge 'that neither prelates excommunicate their subjects without canonical warning first given them*, (except their crime be such as brings them under a [l]general excommunication,) nor subjects contrary to ecclesiastical discipline, talk loudly of appealing before their cause be heard. 'If any one think it necessary to appeal, let a time be fixed for his prosecution of it; and if within that time he against whom the appeal is made do appear, but the appellor appears not, let him make competent satisfaction, if he has wherewithal †. Our will is that this be especially observed by monks and the religious, that they presume not to appeal against the regular discipline of their prelate and chapter, when they are to be corrected for any excess, but humbly and devoutly submit to what is enjoined them. Farther, let a [[l]*vide supra*] general excommunication be yearly denounced against sorcerers, 'such as are forsworn on the [m]sacraments ‡, incendiaries, violent ravishers; so that they who by their perjury have damaged others, be not absolved, nor receive penance from any but the bishop, or one authorized by him, except at the point of death, and then let them be enjoined to go to the bishop, or one authorized by him in order to receive penance in case of recovery. Saving, &c.

[k] The Lat. council 1215, c. 47 §, is here meant.

[l] These general excommunications were one of the many great innovations of this age. The primitive Church excommunicated men for open known crimes only; but these extended to the most secret hiddeu actious. By this way of proceeding men were made to believe that they were actually excommunicated by a sentence past before the crime was committed; thus by the ninth canon of this council he that withdrew his tithes in harvest was excommunicated by a general sentence passed before harvest. From hence sprung the notion of an excommunication *ipso*

'* [ut nec prælati, nisi canonica commonitione præmissa, suspensionis vel excommunicationis sententiam proferant in subjectos, W.]

'† [Si vero quisquam pro sua necessitate crediderit appellandum, competens ei ad prosequendam appellationem terminus præfigatur, infra quem si prosequi forte neglexerit, libere tunc episcopus auctoritate sua utatur. Si autem in quocunque negotio aliquis appellaverit, et eo, qui appellatus fuerit, veniente, qui appellaverit, venire neglexerit, si proprium quid habuerit competentem illi recompensationem faciat expensarum; ut hoc saltem timore perterritus, in gravamen alterius non facile quis appellet. W.]

'‡ [perjuri supra sacramenta, W. Wilkins gives Johnson's emendation in a note.]

§ [Conc. Lat. IV. (Innocent III.), cap. 47; Concilia, tom. xxii. col. 1032.]

*facto*, which was unknown to former ages. For the ancient Christians thought none excommunicated but such as were actually separated from the communion of the faithful. Whereas upon the new scheme a man might be *ipso facto* excommunicate, and yet live and die in the perception of the sacraments. For these general excommunications affected chiefly those who had tender consciences and who were therefore their own accusers.

[m] *Supra Sacro-sancta Evangelia* in the parallel canon of Richard, bishop of Sarum. Sir H. Spelman, vol. ii. p. 146.

8. According to the [n]Lateran council, we forbid any thing to be demanded for inducting or instituting priests, or other clerks, for burying the dead, or giving the nuptial benediction, for chrism, or any of the sacraments. Let the offender have his portion with Gehazi. Let nothing be exacted for licences to priests to perform divine offices, or for licences to schoolmasters. If it have been paid, let it be restored. Let not churches be charged with new pensions by bishops, abbots, or other prelates, nor let the old ones be increased: nor let them presume to apply any part of the fruits to their own use*; and let all that is done to the contrary be null. Let no ecclesiastical benefices or ministries, or churches be given, or promised till they are vacant; that so no man may wish the death of another, a thing condemned even by heathens. Saving, &c.

[n] The Lat. council, 1215, c. 7†.

9. Whereas the authority of the Old and New Testament, and the constitutions of the holy fathers, declare that tithes are to be paid of all things yearly renewing, we decree that they be accordingly paid in full, without any abatement for the wages of servants or harvesters. Let priests have power of excommunicating all withdrawers of tithes, before harvest, and of absolving them according to the ecclesiastical form. What we add to this sanction is, that the tithes of all [o]lands newly cultivated, be paid to no other but the parish churches within whose bounds the lands so cultivated lie. Let detainers of tithes be anathematized according to the constitution of the council of Rouen‡, if

* [Johnson *omits*, sed libertatem, quam majores sibi conservari desiderant, minoribus quoque suis bona voluntate conservent. S. W.]

† [Conc. Lat. IV. (Innocent. III.), cap. 66; Concilia, tom. xxii. col. 1054.]

‡ [Conc. Rotom. A.D. 1189. can. 23; ibid., col. 585.]

upon a third admonition they do not make full satisfaction. Saving, &c.

[o] By this it appears that an opinion prevailed among the English at this time, that the tithe of ground which had never been manured before might be given to any ecclesiastical person or body at discretion; and by this we may give a fair account of the occasion that Innocent the Third had to publish his bull against those who assumed to themselves this power of paying their tithes to whom they would, and that therefore the common lawyers who assert that all were at liberty before this time, is a mere fanciful and groundless notion. It is observable that the pope's letter mentions none that used this liberty but only some in the diocese of Canterbury. And it is well known that in this age the weald of Kent (most of which is in that diocese) was in a state of improvement; the woods were grubbing up, and the plain lands, and the number of inhabitants increasing; and at the same time the sea was continually making recesses on the southern and north-eastern coast, by which means great quantities of land became newly cultivated, and gave occasion to this practice, against which this provision was made.

10. We ordain that in churches not worth above three marks a year none be instituted but he who will serve in person. And in honour to the [p]Lateran council we decree that men in holy orders keeping filthy women in their houses, do either discard them and live chastely, or be deprived of their office and benefice: and farther, that clerks go not to taverns or drinking bouts, for from thence come quarrels, and then laymen beat clergymen, and [q]fall under the canon. And it is not fit that clergymen, who by their own fault were the occasion of the offence, should escape unpunished when the cause comes before the pope. Let all clergymen use the canonical tonsure and the clerical habit. But let archdeacons and dignified [r]priests use copes with sleeves*. Saving, &c.

[p] Lat. council, 1179, c. 11 †.

[q] The most common case by which men fell under the canon, that is, were to be excommunicated *ipso facto*, was for laying violent hands on clergymen. There are about sixty heads in the thirty-ninth title of the fifth decretal concerning excommunication. Above half of these heads

* [Archidiaconi autem et alii in dignitatibus constituti, et presbyteri cappis manicatis utantur. S. W.]

† [Conc. Later. III. c. 11; Concilia, tom. xxii. col. 224.]

relate to this case of striking clerks: yet there are no authorities there cited, that are thirty years before this council of Hubert Walter. The first severe constitutions made on this head do not exceed the time of Innocent the Second, who sat in the chair of Rome when Alberic came hither as legate from him. He in his tenth canon * threatens them with anathema that strike ecclesiastical persons. But excommunication *ipso facto* was a later invention.

[r] The Latin says *dignitarii et presbyteri*, but I delete *et*, for sleeved copes were never allowed any but dignified clergymen.

11. Let not a man contract with a relation of his former wife, nor a woman with a relation of her former husband; nor a godson with a daughter of the baptizer, or of the godfather, whether born before or after. Let no marriage be contracted without banns thrice published in the church, nor between persons unknown. Let none be joined in marriage but publicly in the face of the Church, otherwise let it not be allowed of, except by the special authority of the bishop †. Let no married persons take a long journey, without the mutual consent of both made publicly known. Saving, &c.

12. Let such as are publicly defamed or suspected but cannot be convicted, be thrice admonished to confess, and make satisfaction. If they persist in denying the crime, let a purgation be enjoined them: let it not be deferred from time to time for the sake of money, but be dispatched the first day they have their [s] canonical number (which must not be exceeded) in a readiness. Saving, &c.

[s] Twelve in greater crimes, six in lesser.

13. Supported by the [t] Lateran council, we decree, that wherever there are so many lepers together as can build a church with a churchyard, and have a proper priest, they be allowed to do it; but so, that they do no injury to old churches. And we ordain, that they be not compelled to pay tithes of their gardens, or for the feed of their cattle. Saving, &c.

* [Innoc. III. in Concilio Claromontano, A.D. 1130. can. 10; Concilia, tom. xxi. col. 439.]

† [Sed nec copulentur aliquæ personæ matrimonio, nisi publice in facie ecclesiæ, et præsente sacerdote: et si secus factum fuerit, non admittantur alicubi in ecclesia, nisi speciali auctoritate episcopi. W.]

[t] Lat. council, 1179. c. 23 *.

14. We decree, according to the tenor of the Lateran council, that no brothers templars, hospitallers, nor any religious whatsoever, do receive [u]tithes, churches, or any ecclesiastical benefices from a lay hand, without the authority of the bishop, and that they relinquish what they have of late so taken. [x]And we ordain, that such of them as are under excommunication or interdict by name be avoided by all. Let them present priests to bishops for the [y]churches which they hold not by an absolute right, who shall be [z] answerable to the bishops for their care of the people, and accountable to the religious for the temporals. Let them not presume to remove such as are already instituted without the advice of the bishops. If any templars or hospitallers come to one of their churches that is under interdict, let them be admitted to the ecclesiastical offices but once a year, nor even then let the bodies of such be buried as died under interdict. As to such of their fraternities as keep themselves close to their properties, and never come to their brethren, let them not therefore be exempted from the sentence of the bishop, any more than the rest of the parishioners. 'And we charge that this be observed in relation to all other the religious†. Let the churches in which such attempts are made be interdicted; and all that is done be null [a]by authority of the said council.

[u] Lay-patrons before this council of Lateran presumed to appropriate churches, and all or part of the tithes, to any religious bodies, of their own heads, without asking leave of the bishop or any one else. The canon of Lateran and this of Hubert were intended to put a stop to this evil: and they did it effectually. From this time forward bishops were always parties to such impropriations as were (too often) made, and clergymen were instituted in their benefices by them.

[x] It is evident by what follows that there was a clause here inserted whereby divers of the religious, especially of the templars and hospitallers, were laid under excommunication: but it is dropped by the transcribers. The Lat. council here meant is that in 1179, c. 9 ‡.

* [Conc. Later. III. cap. 23; Concilia, tom. xxii. col. 230.]

'† [Quod autem de prædictis fratribus dictum est ab aliis quoque religiosis, qui præsumptione sua episcoporum jura præripiunt, et contra canonicas eorum sententias et tenorem privilegiorum suorum venire præsumunt, præcipimus observari. W.]

‡ [Conc. Later. III. (Alex. III.), cap. 9; Concilia, tom. xxii. col. 222, seq.]

[y] That is, such as were not given them with consent of the pope, nor exempted from the bishop's jurisdiction by papal authority.

[z] These are the words of the Lat. council, c. 9 *.

[a] In all other cases these privileged churches were exempt from the authority of bishops and metropolitan; but in order to root out lay-donations, this council of Lateran subjects them as to this particular to the diocesan.

'Let not monks be received into monasteries for money, nor have any property, nor wander up and down in towns or villages, nor be placed singly in parish churches, but remain in their convents, or with some of their brethren. If any have paid what was exacted for his admission, let him be incapable of canonical orders, and let him that received it be deprived of his office†. If any have a property except by the allowance of the abbot for the better discharge of some office, let him be removed from the communion of the altar: and he who upon his death is discovered to have had a property, let not the oblation be made for him, nor his corpse be buried among those of his brethren. We charge that this be observed by all the religious, and the abbot or whoever is guilty of a neglect is to incur the loss of his office. Let [b] priorships and obediences be given to none for money: else let both the giver and receiver be deprived. Let not priors once appointed be removed, except for dilapidation, incontinence, or some manifest cause; or because there is a necessity of translating them to some greater office. Let not black monks or canons or nuns use coloured copes, but black only; nor any facings but black or white, made of the skins of lambs, cats, or foxes. Let none of the religious wear [c] caps, nor go out of their cloisters on pretence of pilgrimage. And we decree that in every church impropriated by any of the religious, a vicar be instituted by the care of the bishop, who is to receive a decent competency out of the goods of that church.

* [Ibid.]

† [Monachi etiam sub pretio non recipiantur in monasterio, nec peculium habere permittantur, nec singuli per villas et oppida, sive quascunque parochiales ponantur ecclesias; sed in majori conventu, aut cum aliquibus fratribus maneant; nec soli inter seculares homines spiritualium hostium afflictum expectent, Salamoni dicente, "Væ soli, quia si ceciderit non habebit sublevantem." Si quis autem exactus pro sua receptione aliquid dederit ad canonicos ordines non accedat; is autem, qui accepit, officii sui privatione multetur. W.]

[b] In monasteries that had an abbot the priors were next to the abbots; in lesser monasteries the chief governor was the prior.

[c] The copes then used by the religious had hoods fastened to them, or all of a piece with them, therefore they had no occasion for caps; and I conceive it probable, that the copes of secular priests were in this respect of the same make with those of the monks.

## A.D. MCCI.

### ABBOT OF FLAY'S SABBATARIAN INJUNCTIONS.

The pious frauds of Eustace, abbot of Flay, to terrify men into a cessation from labour from three o'clock on the Saturday till sun-rising on Monday must not be wholly omitted. He shewed a letter written from Christ, and found on the altar of St. Simeon at Golgotha, containing severe objurgations against Christians for their negligence in observing the Lord's day and feasts of the Church. Geoffrey, archbishop of York, countenanced him in his proceedings. He gave absolution, and enjoined penance to those who confessed their guilt in this respect. He enjoined his penitents to give a farthing out of every five shillings of their personal estate for buying lights for the Church, and for burying the poor; had a box placed in every parish church for collecting of it, and an alms-dish for the table of the richer sort, in which a share of victuals was to be put for the poor neighbours; and he forbad buying or selling, and pleadings in churches and church porches. But it seems they who in obedience to Eustace undertook to interrupt men in transacting their business on the Lord's day were called to account for it by the civil power. But it is said that God shewed His judgments against these profaners; a woman weaving after three o'clock on Saturday afternoon was struck with the dead palsy. A man that made a cake at the same time, when he came to eat it on the Lord's day morning, blood flowed from it. Corn grinded by a miller was turned into blood, and the wheel of the mill stood immoveable against the force of the waters. A woman put her paste into the heated oven at this time, and when she thought it

[Sir H. Spelman, vol. ii. p. 128. Wilkins, vol. i. p. 510. R. Hoveden, in ann.]

baked found it paste still. Another woman by the advice of her husband kept her paste till Monday morning wrapped up in a linen cloth, and then found it ready baked. I wish no protestants had vended the like tales. All this made no impression either upon the secular or ecclesiastical governors, excepting Archbishop Geoffrey.

## A.D. MCCXXII.

### PREFACE. ARCHBISHOP LANGTON'S CONSTITUTIONS.

As Hubert Walter was a very haughty and imperious primate, so was his successor Stephen Langton; but with this difference, that the former was obsequious to the pope; this latter, on the contrary, could no more humble himself to the old gentleman at Rome, than to his prince at home. King John was very roughly handled by both these bishops. But this latter not only opposed the pope's legate in his exorbitant grants of benefices here in England, but the king and the pope himself, in being the principal of those peers who declared against the validity of King John's resignation of his crown and kingdom to the see of Rome. And this is the more to be admired, when it is considered that this Stephen was wholly the pope's creature, advanced to the chair of Canterbury by his sole authority, in opposition to the proper electors, the monks of Canterbury, the main body of the bishops of the province, who claimed a concurrent power with the monks in the election of their primate, and of the king himself, without whose consent no prelate could legally be chosen. The monks had clandestinely, without the knowledge either of the bishops or the king, made choice of Reginald their sub-prior, and secretly despatched him away towards Rome, to procure the pope's confirmation; but the design was soon discovered by Reginald himself. The king having many of the bishops with him, next Christmas sends for the principal of the monks, and by consent of all parties, John Grey, bishop of Norwich, the king's favourite, was voted to the see of Canterbury, and twelve of the monks sent to solicit his cause with the pope; but in contradiction to both these elections the pope nominates and consecrates Stephen Langton, and lays the king and kingdom under an interdict

for not receiving him as their primate, and thus for above six years' time the nation was deprived of all public offices of religion, till at last King John, broken and dispirited by opposition from the pope and foreign princes from abroad, and from his barons, and many of his clergy and people at home, submits to the pope's election of Stephen; and yet could not procure a relaxation of the interdict till he had paid forty thousand marks by way of satisfaction to the Church, for the reprisals which he had made on the prelates and religious houses who favoured the cause of the pope and Stephen his archbishop; and had also granted a charter to the archbishop of Canterbury, the bishops of London, Ely, Hereford, Bath, and Lincoln, who had been the chief sufferers by the depredations made by the king during the interdict, that all elections should be free for the future: only the king's consent must be asked, which he promises never to deny without reasonable cause. Sir H. Spelman, vol. ii. p. 135*.

This archbishop was not in a condition to call synods for many years after his advancement, though affairs both of the Church and State were too much embarrassed. I am sensible that there are three constitutions in Sir H. Spelman, vol. ii. p. 133, and four in the Appendix to Lyndwood and Athone, published at Oxford A.D. 1679, which are attributed to this archbishop†, and said by Sir H. Spelman to be made A.D. 1206; whereas it is evident that Stephen Langton was not then archbishop, for the bull by which the pope sets aside the privilege of the bishops of the province in the election of a primate, bears date December, the ninth year of that pope, that is, Innocent the Third, who was not promoted to the pontificate till January the eighth, 1198, and therefore this bull could not be issued till December 1207, and yet it is evident that the annulling of the suffragans' votes in the election of an archbishop was only a previous step to the establishing Stephen in the see of Canterbury: therefore it is impossible, for this and some other reasons, that the constitutions before mentioned should have been made under the presidency of Stephen Langton: (it will hereafter appear that they were indeed made in the time of Simon Langham).

* [Wilkins, vol. i. p. 544.]

† [See Lyndwood Provinciale, app. p. 9, and below, Archbishop Langham's Constitutions, A.D. 1367.]

But when matters were somewhat better composed, viz. in the eighth year of King Henry the Third, this archbishop called a council at Oxford, where the following constitutions were made.

N.B. These are the first constitutions that are inserted into Lyndwood's Provincials, and L. in my notes always stands for Lyndwood*.

* [In this edition Lyndwood is printed in full throughout Johnson's text, and in the editor's notes Lynd. means the Provinciale of Lyndwood, and App., or Lynd. app., the appendix to the Oxford edition, containing the constitutions in chronological order.]

## A.D. MCCXXII.

### ARCHBISHOP LANGTON'S CONSTITUTIONS.

LATIN. [Lynd., p. 345; App. p. 1. Sir H. Spelman, vol. ii. p. 181. Wilkins, vol. i. p. 585*.]

1. By authority of God the Father, the Blessed Virgin, and all the Saints, and of this present council, we [a] excommunicate all those who maliciously deprive churches of their rights, or unrighteously endeavour to infringe, or disturb their liberties; '[[b]as also all those who seize ecclesiastical benefices in the province of Canterbury without the authority of the diocesan, with their abettors; and all that violate sequestrations of vacant churches, or any other sequestrations laid by the bishop; and the clerks who are guilty in this respect are liable to other punishments provided by synod.] All that violate sanctuaries, or take goods or men from thence; all that seize on the goods of clergymen, or of their tenants (and especially of such as dwell on the bishops' lands) unjustly, or do any ways molest their persons; and also all thieves, robbers, freebooters, incendiaries, sacrilegious and falsarious persons, with their principals, receivers, defenders, accomplices, and partakers: those especially who keep robbers on their lands, in their castles, or houses, or are sharers with them, or lords over them†: and all that injuriously disturb the peace of the king, or endeavour to withhold the rights of our sovereign lord or of his realm.

[a] These general sentences of excommunication thrown at random had some effects, else probably they would never have been so long practised,

* ["Concilium Oxoniense ex MS. Cotton Otho A. XV." Wilkins adds in a note, "Concilium hoc pro ecclesia Anglicana reformanda Oxonii celebratum a domino Stephano, Cantuariensi archiepiscopo, A.D. 1222, anno regni regis Henrici, filii regis Johannis VII. tempore Honorii papæ III. Collatum cum MS. Bibl. Lambeth. n. 17. cum MS. Eliensi, n. 235. et cum MS. Hatton. 24. in Bibl. Bodleiana. Primum codicem litera A. secundum litera B. et tertium litera C. designamus." The same letters are used in the editor's notes on these constitutions to indicate the sources of the various readings quoted from the notes of Wilkins, but the readings of his text are as usual followed by W.]

† [Omitted in Wilkins as well as in Spelman.]

nor would princes have desired that the enemies to them or their government should be included in them. Yet I cannot think that they are to be approved, as being without precedent in the first and purest ages. Then indeed heretics and schismatics in general were laid under sentence of excommunication, or anathema: but then the condemned persons were clearly known by their absenting from church, and frequenting other assemblies, or none at all; whereas many criminals by these new-fashioned excommunications were intended to be laid under this sentence, who must be unknown both to priests and people, and who did therefore, notwithstanding this sentence, continue in actual communion both within the church doors and without. Excommunication is a public sentence against persons certain, and for crimes either confessed or proved against them, which cannot be said of these sentences. And indeed few or none of the ends of excommunication were served by this method of proceeding (which see Unbloody Sacrifice, part ii. page 213*.) It might perhaps make impression upon some meek tender-hearted sinners, but none at all upon the hardened, for the humiliation of whom excommunication was chiefly intended.

[It was always a rule among good divines and canonists, that excommunication should pass against none but such as were obstinate, as well as criminous. But by this new method men were excommunicated for committing the forbidden act, however penitent they were, and disposed to submit to discipline. It is true, they were not liable to be taken up by a *capias* till sentence had formally been denounced against them in particular; but all the spiritual effects of excommunication were supposed to fall on them as soon as the forbidden action was perpetrated.] [Addenda.]

[b] The sentences enclosed in these crotchets [ ] are only in the Appendix to Lyndwood and Athone in the Oxford edition, not in Sir H. Spelman's edition, nor in Lyndwood's text.

We excommunicate all those who knowingly bear false witness, or procure others to do it, or who [c]produce such witness in a cause against a marriage, or for the disinheriting any man; as also advocates who maliciously raise objections against the consummation of a marriage, or procure them to be raised; or that the process may be delayed contrary to justice.

[c] This is meant of proctors, who produce witnesses in form of law.

We excommunicate all who for lucre, favour, ill-will or any other cause maliciously charge with crimes such men as have preserved their reputation with the good and grave, that they may give them the trouble of a purgation, or otherwise

* [vol. ii. p. 245. ed. Oxford, 1847.]

aggrieve them; and all those who upon the vacancy of a church maliciously [d] oppose, or cause to be opposed, the inquest concerning the right of patronage, in order to defeat the true patron of the [e] collation, for that turn at least; and those who for favour, lucre, ill will, or other cause refuse to execute the mandates of the king against such excommunicates[f] as despise the keys of the Church; ['and all that are guilty of wilful fraud in paying due and accustomed tithes to their own parish churches, that is, of the fruits of the earth, and of trees, of hay, wherever it grew, of pannage of swine, garden herbs, bees, food of animals and their young, wool, milk, cheeses however made, and all things yearly renewing, fishings, huntings, mills, trade, handicraft, and other honest labours; and of all things due by law or custom; and all that aggrieve the religious, clerks, or beneficed men, or their tenants on the lands of the Church with tributes, or taxes for making walls, or dikes for carriages, or other undue exactions. Let this general excommunication be published by every parish priest in his holy vestments, with bells tolling and candles lighted before the whole congregation in the mother tongue on Christmas, Easter, Pentecost, and Allhallows-day*.]

[d] The practice in this age was upon the death of the incumbent to have a jury consisting half of the clergy, half of the laity, the bishop or his vicar, or the archdeacon presiding as judge, in which the right of patronage, and the qualifications of the clerks presented were determined: it is said these juries or inquests were held of course, or however for the most part; and therefore it is here presumed that they who opposed the having such an inquest, had some turn to serve by it, and are therefore here censured. See Bishop Gibson's code, p. 815 †; Sir H. Spelman has *se opponunt super jure patronatus* ‡.

[e] One would think that these prelates by using the word collation designed this provision in favour of ecclesiastical patrons only: but Lyndwood takes it as concluding[1] presentation and institution §.

[1] [sic, qu. including.]

* [Omitted in Wilkins as well as in Spelman.]

† [Codex Juris. Eccl. Angl., tit. xxxiii. c. 6. Rule iii. p. 779. ed. 2. 1761.]

‡ ["Opponunt se vel opponi procurant super jure patronatus," is the reading of the appendix to the Provinciale, but Lyndwood, Spelman, and Wilkins read "opponunt, vel opponi procurant patronatus quæstionem."]

§ [Lyndwood makes no mention of institution in this place; his words are, "Collatio dicitur, quæ fit per eum qui potest conferre cui vult absque alterius facto . . . Et differt collatio a præsentatione: quia præsentatio pertinet ad patronum ex vi juris patronatus, et non collatio, etiamsi esset patronus ecclesiasticus. . . . Sed in præsentatione

[f] Excommunication is despised, says Lyndwood, 1. When the excommunicate adds to his fault. 2. When he comes into the church though divine service be not then said (unless it be to hear sermon, and to go out as soon as that is done.) 3. If he stand without at the church door while divine service is saying; (and clergymen if they know it, and do not forbear celebrating divine offices are to be punished with excommunication. Decretal., lib. v. tit. 39. c. 18.) 4. If he thrust himself into communion with other men when it is in his power to avoid it. 5. If he continue long under the sentence. In forty days the secular arm is invoked in England; if he continue under it for a year he may be treated as one suspected of heresy.

2. That every prelate have his [g]almoners, and that prelates themselves be hospitable, and at convenient seasons hear the causes of the poor and do them justice in public, and sometimes hear confessions and give penance; and frequently have their own sores healed by proper confessors; and be careful to [h]reside in their cathedrals on some of the double feasts, and some part at least of Lent, as they shall see best for their souls; and that they cause the profession which they made at their consecrations to be read to them twice a year, that the oftener they hear it the better they may remember it. [1. W.] [Lynd., p. 131.]

[g] Sir H. Spelman *Clericos eleemosynarios* *.

[h] Lyndwood here affirms that by the common law [of the Church] the bishop is tied to be resident in his church every Lord's day †.

3. That no prelate when he collates to a church or prebend usurp the mean profits of it: nor extort any thing for [i]institution, or giving possession; nor for the instruments to be drawn on this occasion: nor let the archdeacon or dean ‡ permit any thing to be extorted by their officials. [2. W.] [Lynd., p. 137.]

[i] Lyndwood here distinguishes collation and institution as two acts, that in some cases are to be consequent one upon the other: I suppose it

eadem est ratio sicut in collatione, igitur, etc. Et ut videtur, hic verbum collationis exprimitur, non ut sumatur stricte; secundum ea quæ supra dixi in princi., sed ut intelligatur sive sumatur large pro donatione et sic comprehendat præsentationem. Nam secundum vulgarem modum loquendi in Anglia, qui præsentat aliquem ad ecclesiam, intelligitur eam sibi conferre vel donare. Et hunc intellectum reputo veriorem, ut sic communis usus loquendi attendatur in hoc. . . . Provinciale, lib. v. tit. 17. p. 348.]

* [eleemosynarios clericos habeant honestos, W., clericos *deest*, C.]

† [Cf. Gratian de consec. di. 3. episcopus.]

‡ [Archidiaconus vel decanus, Lynd. app., p. 2. Spelman and Wilkins here agree with Lyndwood's text as quoted in the next note.]

may be the same with admission (as it is now called) and institution, which differ as the promise and the performance of it *. And he allows that by special privilege or custom mean profits may belong to the ordinary notwithstanding this constitution.

[3. W.] 4. For the rooting out of idolatry, that is covetousness, from bishops, we decree that if any one be presented to a church, and there be no canonical opposition, and the clerk presented be not insufficient, let not his admission be delayed above two months: or else let whatever fruits of the benefice have come into the bishop's hands since the presentation be restored to him on his institution. If the archdeacons hinder him that is canonically presented from being [k] admitted within the time prescribed by the [l] council, let the same rule be observed in relation to them: except they can assign a reasonable cause for it when called upon by their superiors.

[k] It seems plain, and Lyndwood allows, that by admission here you are to understand induction.

[l] Lateran at Rome, A.D. 1179, under Pope Alexander III. c. 8 †, where six months is the utmost space allowed for the vacancy of a church.

[4. W.] [Lynd., p. 215.] 5. If two are presented to the same church, let the custody of it pending the suit be given to neither of them.

* [According to Lyndwood collation is analogous to presentation (see above, p. 102, §) and an act previous to institution; the following is his text of this constitution, together with those parts of his gloss upon it which seem necessary to clear up the confusion made by Johnson in this and the previous note, p. 102, e.

Statuimus, ne prælatus aliquis cum ecclesiam aliquam contulerit vel præbendam fructus ejusdem ecclesiæ vel præbendæ nondum collectos sibi præsumat aliquatenus usurpare, vel pro institutione, vel missione in possessionem vel charta super hoc facienda aliquid audeat extorquere: vel ab officialibus suis vel archidiaconis suis sustineat extorqueri.

*Contulerit.* Sc. jure proprio. Differunt namque collatio, præsentatio, institutio, provisio, et alia hujusmodi, de quibus dixi *supra. de jurejur.* c. 1, *ver præsentatus.* Esset enim incongruum, ut ille, qui confert ecclesiam jure proprio, aliquid inde sibi retineat; vel pro ejus cui confertur, institutione, vel inductione aliquid exigatur. Esset enim hoc quædam species Simoniæ.

*Institutione.* Quæ collationem sequi debet, sicut alias dicitur in simili, *de re judi, c. cum aliquibus.* Et est institutio idem quod investitura seu admissio ad beneficium ecclesiasticum; quæ quandoque idem est quod ipsa concessio sive collatio. *de conces. præben. c. post electionem.* Et quomodo diversis modis sumitur institutio, notatur per *Archidia. de præben. c. cum in illis ver. institutione h.* 6.

*Missione in possessionem.* Hæc dicitur inductio quæ de jure communi ad archidiaconum pertinet. *de offi. Archidia, ad hæc et. c. ut nostrum.* Provinciale, lib. iii. tit. 6. p. 137.]

† [Conc. Later. iii. c. 8; Concilia, tom. xxii. col. 222.]

If the right of collation lapse to the bishop by authority of the council, before the dispute between the two patrons, who have both presented their clerks, is ended; let the bishop give the church to neither of those clerks unless by consent of both patrons; that so neither of their rights be in the least prejudiced, when he hath carried his cause as to the right of patronage*. [And though by canon law the patron being of the clergy has six months time to make his presentation, but if of the laity four months, yet by a statute [m] of the king of England each hath six months†.]

[m] This seems a mistake; for I take it to be by custom or common law, not by statute that the lay patron hath six months.

6. We decree with the general [n] council, that both the nocturnal and diurnal office be celebrated with diligence and devotion, as God gives ability: and that all the sacraments, those of baptism and of the altar especially, be performed with such devotion as God inspires: that the words of the canon, especially of the consecration of Christ's body, be perfectly pronounced. After the priest hath received the Lord's body and blood at the altar, let him not [o] twice drink the wine poured into the chalice, or spilt on[l] his fingers, though he do celebrate again the same day‡. [5. W.] [Lynd., p. 226.] [6. W.] [l] [*rather* poured over.]

[n] Lateran under Innocent III., A.D. 1216, c. 17 §.

[o] The priest was obliged after every mass to have wine poured into the chalice, that so the remains of the sacramental blood might be clean washed out of the chalice; and he was for the same reason to suck or lick his fingers, lest any particles of the sacrament should stick to them, and to drink the wine put in to wash the chalice; but he could not do this if he knew he was to celebrate a second time: for the drinking of the unconsecrated wine broke his fast, though drinking of the consecrated cup

* [Ne saltem aliquale præjudicium alteri patronorum {videatur generari, et si postmodum jus evicerit patronatus. W. et *deest* A. C. *post* si *addunt* A. C. forte. Lyndwood's text agrees with MSS. A and C.]

† [Omitted in Wilkins as well as in Spelman and Lyndwood's text.]

‡ [Presbyter autem postquam dominicum corpus et sanguinem sumpserit in altari, si in eodem die missarum solennia ipsum celebrare oporteat, iterato vinum calici infusum, vel digitis superfusum sumere non præsumat. W., Lynd.

*Digitis superfusum.* Ex hac litera colligi potest, quod prima infusio debet esse in calice, secunda super digitos etiam in calice, et utraque de vino: unde errant qui primo perfundunt digitos, et etiam qui in secunda infusione apponunt aquam. Lyndwood's gloss.; comp. below, A.D. 1367. 3.]

§ [Conc. Later. IV. A.D. 1215, cap. 17; Concilia, tom. xxii. col. 1006.]

did not, and the mass was to be celebrated only by such as were fasting. This I take from Bishop Lyndwood.

7. We forbid any priest to celebrate mass twice on the same day, except Christmas and Easter, or when a corpse is buried: in which [last] case the first mass must be that for the day, the second for the dead.

[Lynd., p. 269.] 8. We ordain that beneficed clergymen or clerks in holy orders, be not stewards of farms, bailiffs, or seneschals, and so bound to [p] give an account to laymen, 'and especially that they meddle not in causes of blood *.

[p] By canon law he that hath undertaken a guardianship, for which he hath not passed accounts, is uncapable of orders. Decretal., lib. i. tit. 19, *vide infra.*

[9. W.] 9. Nor let the causes of blood be tried in churches or churchyards. And we forbid by the authority of the [q] council, all clerks that are beneficed or in holy orders, to write or dictate letters for inflicting of death, or to be present at trials concerning life and death; for they are unworthy of the Church's protection who bring so much scandal to the Church.

[q] The general council, says Sir H. Spelman and the Oxford copy; but I believe Lyndwood in the right when he says it was this present council †, yet the same writer well observes that bishops who had a civil power vested in them might grant commissions to their judges who were to sit on life and death.

[Lynd., p. 63.] 10. We strictly command parish priests to feed the people with the word of God, as God inspires them with it, lest they be justly thought dumb dogs: and let them remember that they who visit the sick shall be rewarded with the eternal kingdom: therefore let them cheerfully go when sent for to the sick.

* [Nec jurisdictiones exerceant sæculares, præsertim illas quibus judicium sanguinis est annexum. W. and Lyndwood's text.

*Judicum sanguinis.* . . . Si tamen ipsemet (sc. clericus in sacris constitutus) habeat jurisdictionem temporalem suo beneficio annexam, tunc generaliter potest constituere aliquem laicum vicarium suum vel ballivum, qui de omnibus malefactoribus faciat vindictam. . . . Potest etiam tali specialiter committere certam causam. Lyndwood's gloss, Provinciale, p. 269-70.]

† [*Concilii.* sc. præsentis, Lyndwood's gloss. . . Wilkins has 'generalis concilii,' as Spelman and the Oxford copy. Compare in Johnson's first vol., p. 220, Excerptions of Ecgbriht, A.D. 740, 155-6.]

11. We ordain that every church have a silver chalice, [Lynd., p. 249.] with other decent vessels, and a clean white large linen cloth for the altar: let the old corporals which were not fit for the altar be put in the place appointed for the relics, or be burnt in presence of the archdeacon (if they are consecrated.) And [p. 52.] let archdeacons take care that the cloths and other ornaments of the altar be decent; that books be fit for singing and reading; that there be * two suits of vestments for the priests: and that the attendants at the altar wear surplices, that due esteem be paid to divine offices.

12. [r]We strictly forbid any man to resign his church, [p. 107.] and then accept the vicarage of [the same church] from his own substitute: because in this case some unlawful bargain may well be suspected: let the one of them who presume to do this be deprived of his parsonage, the other of his vicarage. And we judge it absurd that he who is parson of a [p. 141.] church should confer any part of that parsonage to another under the title of a parsonage, unless he first absolutely resign the whole benefice. ['][Nor let it be allowed to any [37. W.] one to assign any portion of his church to another, under the title of a benefice, so as that it may be held with another benefice, to which the cure of souls is annexed †.]

[r] It may seem strange that any one should choose to be vicar rather than rector; but as there might in some particular cases be other reasons for it, so there was one very apparent one, viz., that the Lateran council under Innocent the Third, 1215 ‡, had forbid the holding two churches, that is rectories, but not two vicarages, or a rectory and a vicarage. For though the Lateran canon against pluralities was not yet put in execution here, yet the clergy were apprehensive that this would soon be done.

13. To prevent spiritual bigamy, we strictly forbid with [Lynd., p. 134.] consent of the council, that any church be committed to two rectors or parsons: and in churches where there are several parsons, let the portion of those that die accrue to the survivors, till the whole come to one man: nor let two vicarages be in the same church, excepting where the division is ancient.

* [ad minus, W. and Lynd. text.]

† [Johnson here follows the arrangement of Lyndwood's text, p. 142; according to the appendix to the Oxford edition of Lyndwood as well as Spelman and Wilkins, the last sentence would come next after the 49th constitution below.]

‡ Conc. Later. IV. cap. 29; Concilia, tom. xxii. col. 1015.]

[Lynd., p. 131.] 14. We ordain that no bishop admit any one to a vicarage, unless he be willing personally to minister in the church in which the vicarage is granted him, and be fit within a short time to be ordained priest. If he who has been admitted refuse to be ordained priest, let him be deprived of the benefit of the vicarage.

15. We ordain that churches not worth above five marks a year, be given to none but such as will personally reside and minister in the said churches: let them who do not be deprived by the diocesan, after due admonition.

[p. 64.] 16. Abundance often breeds neglect, indigence beggary, to the scandal of our order; we therefore, choosing the medium, ordain that an estate which may be let to farm for five marks at least, be assigned to the perpetual vicar, excepting in those parts of Wales where vicars are content with less by reason of the poverty of the churches. Let the diocesan after due consideration had of the value of the church, determine whether the parson or the vicar, or both together, are to bear the charges of the church. Provided still, that the archdeacon be content with one procuration, whether from one or both.

[p. 184.] 17. We determine that in every church that has a large parish, there be two or three priests according to the largeness of the parish and the estate of the church: lest when one priest is sick or disabled, divine offices and the sacraments of the Church be withdrawn from the parishioners, especially such of them as are infirm.

[p. 108.] 18. And that the bishop take an oath from the presented clerk, that he has neither given nor promised any thing to the presenter for the presentation; nor entered into any covenant for this purpose, especially if there be any probable suspicion in relation to the party presented*.

[p. 326.] 19. To prevent the want of confessors, and because some rural deans and parsons are ashamed to confess themselves to their prelates, we ordain† that certain discreet confes-

* [Si tamen ei propter hoc merito videatur suspectus, non admittatur; cum talia manifeste canonicis obvient institutis. W. Johnson's translation agrees with Lyndwood's text.]

† [Quoniam nonnunquam ob defectum confessorum, vel quia decani rurales vel personæ erubescunt forte suo confiteri prælato, certum imminet periculum animarum; volentes huic morbo mederi, statuimus, W.; Lyndwood's text is to the same effect.]

sors be appointed by the bishop with the assistance of the archdeacon, to take the confessions of deans, parsons, and priests. In cathedrals where there are secular canons let them confess to the bishop or dean, or to the confessors assigned them by the bishop, dean and chapter.

20. *We ordain that rural [s]deans presume not for the future to hear matrimonial causes: but that the examination of them be committed to discreet men, who are to be co-assessors, when the sentence is passed, if conveniently it may be. [Lynd., p. 79.]

[s] Lyndwood affirms that the dean of the arches has not this power, except by special commission; yet he owns, if they had a perpetual title to their places they might: for then they were removeable at pleasure, but now they are for life †.

21. We forbid with the [t]terror of anathema, any one to retain robbers in his service for committing robberies, or knowingly to let them dwell on his lands. [p. 308.]

[t] Lyndwood here produces the opinion of canonists who affirm that such threats of anathema may bind, that is excommunicate, or lay under excommunication the offender, upon supposition that it was the intention of them that pronounced it actually to bind them.

22. That archdeacons may not be burdensome to the churches subject to them, we strictly forbid them to exceed the number of horses and men prescribed by the general [u]council, and to invite strangers to the procuration made for them on account of their visitation (though the rector may invite any that he pleases, in honour to the archdeacon ‡.) And for this reason we forbid the archdeacons to hold their chapters in the church that is visited [x] on the visitation day, except it be in a borough or city. [p. 219.]

* [Johnson *omits*, Quoniam in causis matrimonialibus magna est discussio (discretio A, B. Lynd. gloss. and Lynd. app.) necessaria, unde periculosum est eas a simplicibus tractari, S. W. Lynd. app. The same preface is quoted in Lyndwood's gloss, Provinciale, p. 79, *ad verb. Et infra.*]

† [Intellige id quod hic dicitur, *audire non præsumant* scilicet ratione officii sui, vel prætextu alicujus consuetudinis; nam cum tales decani rurales non sint perpetui, et quicquid faciunt non suo sed alieno nomine faciunt; etiam ratione consuetudinis præscribere non possunt. Lyndwood, gloss, p. 79. Of the dean of arches, see ibid., p. 80, *ad verb. committatur.*]

‡ [Johnson *omits*, Sed ipsi archidiaconi nullum invitent, ne forte qui per suum adventum ecclesias non gravatas gravarent, gravent saltem per invitatos; unde, ut subtrahatur eis necessitas invitandi, prohibemus, W. To the same effect Lyndwood's text and the appendix, omitting 'gravatus.']

[u] See council of Hubert Walter, archbishop of Canterbury, A.D. 1200, can. 5.

[x] Here Lyndwood observes that the visitor might lodge and take both dinner and supper with the visited incumbent, and not more.

23. We strictly forbid archdeacons to extort a procuration [y] without reasonable cause, but on the day in which they personally visit the church, and that they do not squeeze money from the church as a fee or ransom for not visiting*.

[y] A reasonable cause of visiting by another is infirmity, says Lyndwood.

[23. W.] [Lynd., p. 282.]

24. That archdeaconries and [z] deaneries, which consist merely of spiritualities, be not [a] let to farm; but if any estate be annexed to the office, that may be farmed out†. And we ordain the same as to other benefices. If any archdeacon or dean be convicted of transgressing this decree, let him be wholly suspended from his office by the bishop for a year, and let another be substituted, who may with more discretion supply his place.

[z] Such as Shoreham, Croydon, &c.

[a] If, says Lyndwood, the archdeacon allow a certain sum by the year to his official, on condition that the official be answerable to him for the whole profits, this is lawful; but if he let it on condition that the official pay him a certain sum by the year, and keep the rest to himself, this is forbidden.

[24. W.] [Lynd., p. 49.]

25. Let archdeacons take care in their [b] visitations that the canon of the mass be correct; and that the priest can rightly pronounce (at least) the words of the canon, and of

[1] [sanum.] baptism, and that he knows the true[1] meaning of them: and let them teach laymen in what form they ought to baptize in case of necessity, in some language or other. And let them look diligently, according to the general [c] council, that the

[2] [eucharistia.] host[2], the chrism, and holy oil be kept under lock and key. And let them have all the ornaments and utensils of the church set down in writing: and let the books and vestments be viewed by them [d] every year; that they may know what additions are made by the parson's diligence, 'or what the church hath lost'‡.

* [In Wilkins this is appended to Const. 22.]

† [de superioris licentia, S.W. Lynd.]

'‡ [Vel quæ tempore intermedio per malitiam vel incuriam deperierint. Item provideant de possessionibus ec-

[b] Here Lyndwood affirms that archdeacons have of common right power to visit by way of enquiry, but they have no power of correction without custom, except for slight matters.

[c] Lateran, A.D. 1216, under Pope Innocent the Third, c. 20*.

[d] That is, says Lyndwood, every year in which they visit, for in Lyndwood's time the archdeacon's visitation was triennial, but in the time of making this constitution it was undoubtedly annual: they were now bound to visit triennially, but might do it oftener, if they saw occasion.

We forbid archdeacons, deans, and their officials to levy taxes, or make exactions on their subjects. [Lynd., p. 221.]

26. We decree that archdeacons, and their officials, publish the sentence of [e] excommunication, suspension, or interdict against none without canonical warning, unless where the excess be manifest. Let him that excommunicates any one otherwise, be subject to the punishment declared by the Lateran [f] council; for suspending or interdicting, let him be punished at the discretion of his superior: and let the superior prelates observe this. [25. W.] [Lynd., p. 548.]

[e] Lyndwood observing here the difference between those who unduly pass sentence of excommunication, and those who unduly pass sentence of suspension and interdict, makes this farther reflection concerning the agreement and differences between the sentences themselves, which seems to me very instructive: first, says he, they agree in ten points. 1. That the sentences must be pronounced *e scriptis*. 2. A preceding appeal protects the appellant from any of these sentences. 3. None under any of them ought to celebrate. 4. A preceding admonition is necessary in each case. 5. An oath [to submit to the Church] is necessary to obtain absolution, by way of precaution, and upon such oath absolution is so granted in each case. 6. Each sentence is to be observed by superiors (though passed by inferior ordinaries.) 7. Because none under either sentence can elect or be elected, or give testimony. 8. That nothing ought to be determined in any matter relating to these sentences, without citing the adverse parties. 9. Because the special sons of the apostolical see (that is some particular friars, and exempt regulars) are not subject to these sentences (I suppose he means, except they are inflicted by the pope himself.) 10. They are all called by the name of ecclesiastical censures. They differ in nine points. 1. With one suspended or interdicted it is lawful to communicate, without a special prohibition, but not with an excommunicate. 2. Because in strictness the man is excommunicated, or suspended, the place is interdicted. 3. Because the effect of excommunica-

clesiarum, ut ita singulis annis possint prospicere, ne ecclesia suo jure defraudetur, S. W. So Lyndwood's text, except 'imperitiam' for 'incuriam,' and 'proficiant' for 'possint prospicere.']

* [Conc. Later. IV., A.D. 1215, cap. 20; Concilia, tom. xxii. col. 1007.]

tion already passed cannot be suspended, but the effect of the other sentence may be suspended. 4. Because a relaxation of interdict passed in general on a city or army, cannot be granted by way of precaution, but an absolution from excommunication may be so granted (that is, the excommunication may be suspended, if he profess his innocence, while he is making his defence in court: for he could not be heard while under actual excommunication.) 5. Because a general sentence of excommunication binds a bishop, though he be not named; but not a general sentence of suspension or interdict. 6. Excommunication is not inflicted upon any great body or college of men in general, but an interdict is. 7. Excommunicates (so remaining) are not admitted to penance till the point of death, but those under suspension and interdict are. 8. On certain festivals those under interdict are admitted into the church, but excommunicates never. 9. Excommunication is never passed upon one man for the fault of another, but interdict and suspension are [passed on subjects and servants, for the faults of their lords and masters.] Caldrini, says Lyndwood, adds a tenth, that interdict cannot be passed on account of money without the pope's leave, but excommunication may. Lyndwood supposes that an eleventh may be added, that he who (unduly) passes the sentence of excommunication has a certain punishment assigned for him; but he who unduly passes a sentence of suspension or interdict is to be punished at discretion, as by this constitution.

[f] The punishment declared by the Lateran council, A.D. 1216, c. 47*, is to be forbidden entrance into the church for a month.

[26. W.] [Lynd., p. 278.] 27. We firmly forbid burial, baptism, any ecclesiastical sacrament, or the contracting of matrimony to be denied to any on account of money. Our will is that the ordinary do justice as to what is used by custom to be given†, according as it is more largely expressed in the statute of the [g] general council. To demand any thing for chrism or the holy oil we judge unreasonable, because it has so often been forbid.

[g] Lateran council, 1216, c. 66‡.

[27. W.] [Lynd., p. 72.] 28. That archdeacons and their officials§ do not obstruct peace, but give leave to the parties to agree, or withdraw, by compounding without any demand on that account; so that the suit be such as admits of composition; and that he inflict no punishment on them on that account; unless the

* [Conc. Later. IV. (Innoc. III.), A.D. 1215, cap. 47; Concilia, tom. xxii. col. 1031.]

† [quoniam si quid pia fidelium devotione consueverit erogari, super hoc nolumus per ordinarium loci ecclesiis justitiam exhiberi, S. W. To the same effect Lyndwood's text.]

‡ [Concilia, *as above*, cap. 66, col. 1054.]

§ [vel decani, W. Lyndwood's text has instead of these words 'vel eorum officiales aut alii judices.']

unrighteousness of the plaintiff or defendant be very manifest.

29. We strictly forbid archdeacons, their officials, and other judges, to bring any man who has preserved his reputation among the good and grave, to a purgation, at the suggestion of their apparitors: nor let them be judges and plaintiffs in the same[1] cause, as when the question is, whether what they demand be due*. [1 [sua.]]

30. [h]We decree by the authority of this present council that archdeacons, deans, all parsons and dignified men, all rural deans and priests, go in a decent habit with close copes; the same is to be observed by the [i] officials of archdeacons when in consistory†: and let none of these nor any other clerks wear long hair, but be decently clipped and crowned; unless they disguise them out of a just fear. Let them also abstain from immoderate eating and drinking and be compelled to the diligent observance of all these particulars by their superiors, according to the direction of the [k] general council. [28. W.] [Lynd., p. 117.] [p. 119.]

[h] It is evident that these constitutions of Langton are for the main but transcripts from the Lateran council, 1216‡, with some variations made by our prelates; and this is true of those constitutions where that council is not mentioned as well as where it is. To this purpose I will transcribe the words of that council, c. 16§, relating to the apparel of clergymen, viz., *Clerici ——— clausa deferant insuper indumenta nimia brevitate, vel longitudine non notanda. Pannis rubeis, aut viridibus, necnon manicis, aut secularibus* ¶ *consutritiis, seu rostratis, frænis, sellis, pectoralibus, et calcaribus deauratis, aut aliam superfluitatem gerentibus non utantur. Cappas manicatas ad divinum officium intra ecclesiam non gerant; sed nec alibi qui sunt in sacerdotio, vel personatibus constituti.* It is evident from hence that the close cope mentioned so often in our English constitutions, was a garment of the same make with the officiating cope; and the close cope was a cope without sleeves; both these particulars I infer from the words of the Lateran council; viz., let clergymen wear garments close in the upper parts—let them not wear copes with sleeves in divine offices in the Church nor any where else if they are beneficed priests. Lyndwood farther informs us that this habit never prevailed here in England: he

* [In Wilkins this is appended to Const. 27.]

† [Idem quoque observent officiales episcoporum (archiepiscoporum B.) et archidiaconi, dum fuerit in consistorio. W. Johnson's translation agrees with Lyndwood's text.]

‡ ["At which this archbishop was present," MS. note Wrangham. Cf. Mat. Paris, A.D. 1215, p. 229.]

§ [Conc. Later. IV. (Innoc. III.), A.D. 1215. cap. 16; Concilia, tom. xxii. col. 1006.]

¶ [For "secularibus" read "sotularibus."]

does in effect say the constitutions relating to it were never received: and some do think, that non-conformity in this point was venial: for thus he concludes, that where there is no penalty assigned, or a contrary use is not forbidden, there common observance is stronger than a constitution, and excuses. Lyndwood farther asserts that no colours were forbidden the clergy but red and green, though they were not to wear striped, or particoloured garments; otherwise they were perfectly at discretion, both as to fashions and colours.

[i] Officials of archdeacons are particularly mentioned, as being not comprised in the foregoing terms: for Lyndwood says they are not dignitaries, and it often happened that they were not priests.

[k] Lat. council aforesaid, c. 17*.

[Lynd., p. 125.] [1] [hospitiis.]

31. Let not clergymen that are beneficed, or in holy orders, publicly† keep concubines in their manses[1], or have public access to them with scandal any where else. If the concubines after admonition publicly given do not get them gone, let them be expelled from the churches, and not be admitted to the sacraments: if they still persist, let them be excommunicate, and the secular arm be invoked against them. As to the clergymen themselves, let them, after admonition, be restrained by a substraction of their‡ benefice §.

[1] Is it lawful therefore to do it privately? says Lyndwood, and answers, they are excused as to the punishment, though not as to the crime ¶.

[p. 166.]

32. Though we would have the lawful testaments of beneficed clergymen to be regarded, yet if they leave any thing to their concubines let it be converted to the use of the church of which the deceased was rector, at the discretion of the bishop.

[29. W.] [Lynd., p. 149.]

33. We ordain that no abbot, prior, archdeacon, dean, parson, dignitary, or inferior clerk, do sell, mortgage, alienate, by an infeofment, or by any other means, to their kindred, or any other persons, the estates belonging to their churches or dignities, without observing the [m]form of the canon; and that all that is done to this purpose, be null; and that the offender

* [Conc. Later. IV. c. 17; Concilia, tom. xxii. col. 1006.]

† [publice vel occulte, A, B.]

‡ [Johnson *omits* officii et, W. and Lynd. text.]

§ [In Wilkins this and the following paragraph are the latter part of Const. 28.]

¶ [Johnson here mistakes a sentence which is part of Lyndwood's argument for the conclusion which is afterwards given in these emphatic words, "sed tu dic, quod nec publice hoc licet, nec occulte." Provinciale, lib. iii. tit. 2. p. 126-7.]

be deprived of his dignity, parsonage, or church, by his superior, unless within a time prefixed, he do at his own cost restore what has been alienated. And let him be excommunicate who for the future receives the goods of the church, and detains them after admonition, and not be absolved till he makes restitution. Let the [n]greater prelates observe the same.

[m] Causa 12. quæst. 2. is very full of canons to this purpose; I am apt to think the fifty-sixth canon is here particularly meant, which obliges him that alienates from the Church to give as much of his own as he takes away.

[n] That is, the bishops, who by the seventy-fourth of the canons just now mentioned were allowed to give away but one fiftieth part of the estate of a church even to a monastery, but an hundredth to any other church. And all bishops were forbid to alienate without consent of chapter, and unless it were in order to obtain somewhat better than was alienated.

34. Whereas some do (which we cannot speak without tears) spend their ecclesiastical revenues in building houses on lay fees, for their sons, nephews; nay, for their concubines, and so misapply the goods of the church designed for the use of the poor: now we decree*, that they who are suspected to do this, or to give money for the doing of it, be punished at the discretion of their superiors, unless they make their purgation at his discretion. [30. W.] [Lynd., p. 165.]

35. We ordain that the [o]obedientials of monasteries, as well as the [p]greater prelates, do twice or four times in the year yield up their accounts before the brethren assigned by the convent, or before their superiors, according to the custom of the monastery: but such prelates as have estates distinct from those of the monks are not bound by this constitution. [31. W.] [Lynd., p. 204.]

[o] That is, the cellarer, chamberlain, treasurer, &c.

[p] Abbots and priors.

36. We decree that nuns and other religious women wear no silk veils†, nor needles of silver or gold in their veils; that neither monks nor canons regular have girdles of silk, or garnished with gold or silver, nor use [q] burnet, or any irre- [32. W.] [Lynd., p. 205.]

* [Johnson here abridges the original.]

† [velum vel peplum sericum non habeant, W. and Lynd. text.]

gular cloth. Let the dimensions of their clothes be commensurate to their bodies, not longer than to cover their feet, like [r] Joseph's coat, which came down to the ankles*. Only the nun may wear a ring, and but one. Let the offenders be subject to regular discipline if they mend not on admonition.

[q] Artificial brown: for natural brown was the proper colour of their habit.

[r] *Polymita, et talari*, vulgar Lat. Gen. xxxvii. 23 .

[33. W.] 37. Inferiors are to have a pattern of their life from the [s] abbots; therefore we decree that abbots change their chaplains, or chaplain (if they have but one) every year; that so they may have more witnesses of their innocency in case of scandal ‡.

[s] The Oxford copy says abbesses, which to me seems a more probable reading.

[34. W.] [Lynd., p. 151.] 38. That prelates of religious houses do not give or sell [t] corrodies or stipends, either for life or for a certain time, unless for urgent necessity with the bishop's consent.

[t] Certain portions of meat, drink, money, &c., delivered every day week, or month, &c., otherwise called liberations, or liveries.

[35. W.] [Lynd., p. 279.] 39. That nothing be demanded for the reception of any one into a religious house: if he that is to be admitted be forced to buy his own clothes, by reason of the poverty of the house, yet let nothing be exacted beyond the just price §.

[41. W.] [Lynd., p. 204.] 40. That monks, canons regular, and nuns, have but one

* [Metiantur etiam juxta dimensionem corporis vestem suam, ita quod longitudinem corporis non excedat, sed pede, sicut decet, subducto[1] sufficiat eis[2] indui veste talari, W. [1]subtecto seu subducto, A B., [2]ut cum Joseph induatur. C. Johnson's translation agrees with Lyndwood's text.]

† [Bibl. Sacr. Vulg. Gen. 37. 23, "Confestim igitur ut pervenit ad fratres suos nudaverunt eum tunica talari et polymita."]

‡ [XXXIII. *Ut abbates annuatim capellanos suos mutent.*

Ut autem secundum canonicas sanctiones abbatibus, a quibus minores vivendi normam habent assumere, super honesta conversatione testium copiositas suffragetur; decernimus, ut ipsi capellanos suos vel aliquem illorum singulis mutent annis, etc. W. Lyndwood's text, p. 206, is the same except the title; the reading "abbatissæ ipsæ" in the appendix to the Oxford edition of Lyndwood is clearly without authority; Johnson here abridges the original.]

§ [Wilkins gives fifteen more constitutions nearly as Spelman, but differently from Johnson, who here follows the appendix in the Oxford edition of Lyndwood.]

dormitory [for their several houses] and a single bed for every single person; that they eat in one refectory altogether on the common provisions; that not money for clothes, but clothes be delivered to every one by their chamberlain, or other officer; that upon the delivery of new clothes, the old ones be returned for the use of the poor, or other necessities, at the discretion of the superiors, without giving any thing for the new ones, or receiving any thing for the old ones, on pain of loss of office to the chamberlain, and that the monk or nun have no new clothes for that whole year. [42. W.]

41. Let none be admitted monks under[u] eighteen years of age, unless evident utility or necessity require. [ib.] [Lynd., p. 202.]

[u] The decree, *Quia autem*, caus. 20. quæst. 1. c. 5, bearing the name of Gregory the Great, gives a reason for this which is peculiar to islanders, (for fourteen is the age in other countries,) viz., *Quia dura est in insulis congregatio monachorum.*

42. Let neither clergymen nor laymen have frequent access to nunneries without reasonable cause. Let bishops take care that nuns be competently maintained by their monasteries, and that they therefore do not exceed their proper number, under pain of deposition to the abbess or prioress, as also to the masters as priors that have the custody of the nuns. Let the nuns make confession to priests appointed by the bishop. Farther, we forbid nuns to receive seculars to dwell with them (excepting necessary servants) within the verge of their houses, but with the bishop's consent. [45. W.] [Lynd., p. 210.] [43. W.]

43. We enjoin[x] silence to monks, canons regular, and nuns, at times and places appointed; 'and that neither men nor women come within the bounds of a cloister, without leave of the superior; nor may the [religious] go out except leave be given for some reasonable cause, nor even to visit their parents, unless they are such as are liable to no just suspicion*; and not even then without a mate, and a day [ib.] [Lynd., p. 207.]

'* [Nec viris aut mulieribus religiosis, absque superioris licentia, egredi liceat septa domus, nec sine certa causa et honesta egrediendi eis licentia concedatur. Ita quod nulli claustrum (claustralium, Lynd. text) causa recreationis aut visitandi parentes pateat aditus exeundi, nisi talis forte fuerit, de quo nihil sinistri possit aut debeat suspicari, W. The Oxford copy translated by Johnson reads 'ingredi' for 'egredi.']

[44. W.] prefixed for their return. In case the bishop, abbot, or prior (where there is no abbot) send a monk guilty of an excess to any other monastery in the same, or another diocese, and the bishop compel him to be admitted, let him be there subject to regular discipline, and let him stay till he be reformed; and if the time be long, let another monk be sent to the other monastery in his room, till the penitent be called home by his superior. [But if the monastery send none in his room, let the monastery from whence he came,
[45. W.] find him in clothes*.] But let not the monk be received
[Lynd., p. 210.] into the other's monastery by any secret confederacy†.

[x] Silence was always to be kept in the oratory, refectory and dorter, and at certain hours in the cloister, or places of conversation and instruction. See Decretal., lib. iii. tit. 35. c. 6.

[50. W.] 44. Let the fare of all in the refectory be the same. The
[Lynd., p. 208.] head of the house may have such provision prepared for him, as he sees proper for the relief of the sickly. Let the whole provision be set on the table without any purloining, and the remains wholly be given to the needy by the almoner. Neither abbot, nor prior, nor almoner may dispense with this. And whoever breaks this statute, or that concerning clothes, let him be suspended from the celebration of divine offices, if he be a priest; from receiving the communion till full satisfaction be made, if the offender be in inferior orders, or a nun. [And let no nun eat flesh by herself in the refectory, where flesh is not commonly eaten‡.]

[46. W.] 45. Since religious persons have no property, therefore let them not presume to make a will: for they have no temporal right to transfer to another.

[ib.] 46. Let neither a canon regular nor monk take any church or manor to farm that belongs to his own [y] church, nor have

* [This sentence is in Wilkins and Lyndwood's text, but not in the appendix.]

† [This sentence, which Johnson translates from the appendix to Lyndwood, corresponds to the first part of the 45th constitution in Wilkins:

Adhæc per nullam societatem vel confœderationem admittatur monachus in alterius monasterio, ad moram faciendam, nisi cum literis episcopi sui, vel abbatis, vel prioris conventualis, proprium non habentis abbatem. Instead of 'confœderationem,' Lyndwood's text, p. 210, has "considerationem,' which Lyndwood observes may mean for the purpose of teaching the monks, or instructing them in music, singing, or of living under a stricter and better rule.]

‡ [This is in Wilkins and Lyndwood's text, p. 210, but not in the appendix.]

any manor committed to his custody*, unless he be an [z]obediential: let the offender be corrected by his superior, let not religious take any churches to farm, so as to claim any right after the death of the [present] parson: if they do, let them be punished at the discretion of their superior. [47. W.]

[y] That is, the monastery: as a parochial church often implies the parsonage, so a monastic church implies the monastery belonging to it.

[z] See Const. 35. All the offices of the monastery were called obedientials.

47. Let neither monks nor canons regular spend time in eating or drinking, save at the stated hours. They may by leave quench their thirst in the refectory, but not indulge. Here we except the infirm, and such as attended the prelates. [48. W.] [Lynd., p. 211.]

48. We ordain that when the monks for any just cause are under a relaxation[a]†, they have two seniors with them to awe the rest, and to check their levities, and testify their good behaviour under their relaxation. We would have the same observed by canons regular and nuns. [49. W.] [Lynd., p. 211.]

[a] That is, in their country seats, which they had for this purpose. Sir H. Spelman's copy has *maneria*, the Oxford *misericordia*. One explains the other; Lyndwood takes no notice of this constitution.

49. We ordain that no churches belonging to particular parsons be let to farm, but for a just cause approved by the bishop, and to one in orders, of whom it may be presumed that he will apply the fruits to good uses‡. [36. W.] [Lynd., p. 151.]

* [Johnson *omits* ita quod ex longa ipsius mora vel conversatione scandalum oriatur, W. and Lynd. app.]

† [Ad hæc statuimus, ut cum ratione debilitatis vel alia justa causa monachi seorsum in maneria morentur, W. The following is Lyndwood's text of this constitution, which with the glosses upon it escaped Johnson's notice.

Ad hoc statuimus, ut cum pro debilitate vel alia justa de causa monachi seorsum in misericordia commorantur, semper habeant secum duos ad minus seniores, qui aliorum levitates debita correctione compescant. Et qui postmodum in capitulo testificentur qualiter misericorditer fuerint conversati. Idem inter canonicos regulares et moniales volumus observari.

*Misericordia*, i. e. Relaxatione austeritatis observantiæ regularis ad tempus, et loquitur secundum consuetudines diversorum locorum, in quibus religiosi per septimanas alternatim recreantur, et sunt exonerati a choro et observantia claustrali.

*Misericorditer*, i. e. in misericordia existentes, Provinciale, lib. iii. tit. 19. p. 211, 212.]

‡ [Here follows in the appendix of the Oxford edition of Lyndwood, Wilkins's 37th constitution; see above, constitution 12.]

[38. W.] [Lynd., p. 74.] 50. Because marriages are often obstructed by [b]advocates, we ordain that when sentence is given in favour of a marriage, the advocate who opposed it be deprived of his advocateship for one year, unless the judge in giving sentence excuse him on account of such error or ignorance as just and rational men may be guilty of.

[b] Who start false objections and make frivolous appeals, says Lyndwood.

[39. W.] 51. [[c]We charge that for the future Jews do not keep Christian slaves. Let the slaves be compelled by ecclesiastical censure to observe this; and the Jews by canonical punishment, or by some extraordinary penalty contrived by the diocesans. Let them not be permitted to build any more synagogues; that they be looked upon as debtors to the churches of the parishes wherein they reside as to tithes and offerings.]

[c] These two last constitutions are only in the Oxford copy: yet it is very probable that they are genuine, because they agree in the main with the sixth title of the fifth book of Decretals, which relates wholly to the Jews: and the sixty-eighth canon of the council of Lateran, 1216*, enjoins them a distinct habit. When these constitutions speak of a canonical punishment to be passed on the Jews, they can mean no more but a prohibition of mutual commerce between Christians and Jews; if they mean that the Jews were under their cognizance, as pastors of the church of Christ, it is certain they only exposed themselves; they might as well claim authority over the Indian brachmans. I do not observe that the canon law pretends to lay any censure upon the Jews, but only in some cases forbids Christians to deal with them, and this was more than could be justified. Lyndwood was wise not to meddle with these constitutions.

[40. W.] 52. [To prevent the mixture of the Jewish men and women with Christians of each sex, we charge, by authority of the general council, the Jews of both sexes to wear a linen cloth two inches broad, four fingers long of a different colour from their own clothes, on their upper garment before their breast; and that they may be compelled to this by ecclesiastical censure. And let them not presume to enter into any church, nor for that end to lodge their goods there†. If they do, let them be corrected by the bishop.]

* [Conc. Later. IV. (Innoc. III.) A.D. 1215, cap. 68; Concilia, tom. xxii. col. 1055.]

† [Et ne occasionem habeant ingrediendi, inhibemus distincte, ne deposita eorum in ecclesiis conserventur, W.]

To give a good conclusion to all, we charge that the 'Lateran council, celebrated by H. Innocent the pope *, be observed by all, as to the payment of tithes, and all other matters: and that the constitutions thereof, together with these, be read and explained yearly in the episcopal synods, as also the excommunications publicly enacted in this synod, which are likewise to be read four times in every year in the parish churches. [50. W.]

'* [Lateranense concilium sub sanctæ recordationis papa Innocentio (tertio addit B.) celebratum, W.]

## A.D. MCCXXIII.

### SUPPOSED CONSTITUTIONS OF ARCHBISHOP LANGTON.

Here is evidently the conclusion of this council; but in the Oxford copy eleven more constitutions are added; the first of these I find no where else, and therefore here present it to my reader *.

[Lynd. app., p. 7. Wilkins, vol. i. p. 593 †.]

1. Baptism shall be celebrated with great reverence and caution, and in the prescribed form of words, wherein the whole virtue of baptism consists, and likewise the salvation of the children, that is, "I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost. Amen." 'And let a name be given to the child, and [let it be done] in the [a]language which is best understood by them. Let priests often instruct laymen, that they ought to baptize children in case of necessity, and it may be done even by a woman, or by the father or mother of the child ‡. Let the priest diligently enquire of the layman who has baptized a child what he said; and if he find that it was done discreetly, and in due manner, and that he pronounced the form of words in his own tongue, let him approve what has been done; but if not, let him rebaptize the child. Let three at most be allowed to [b]lift the child out of the font §.

* [For parallel passages respecting baptism, see A.D. 1200. 3, Wilkins, vol. i. p. 505; Conc. Dunelm. (circa 1220) ibid. p. 575-6; Conc. Prov. Scot. 1225, c. 55, ibid. 614; Const. S. Edmund, 1236, c. 9—13, ibid. p. 636; Const. Othobon., A.D. 1268, ibid., vol. ii. p. 2.]

† ["*Statuta legenda in concilio Oxoniensi edita per dom. Stephanum Langton Cantuar. Archiepiscopum, anno Dom.* MCCXXII. Ex MS. Hatton. in bibl. Bodl. Oxon. 24."]

‡ [The text from which Johnson made the above translation runs thus:

Et ut nomen baptizato imponatur, et sub eadem forma, quam melius noverint, doceant frequenter sacerdotes, laicos baptizare debere pueros in necessitate, et mulieres, et patrem et matrem pueri in summa necessitate. Lynd. app., p. 7.

Wilkins's copy in this and some other places, apparently through fault of the MS. Hatton. Bodl. 24, is less clear, but is generally more clear and full than that in the appendix to the Oxford edition of Lyndwood, from which it differs so widely that no attempt is here made to state the discrepancies.]

§ [Ad levandum puerum de sacro fonte tres ad plus recipiantur. W. and Lynd. app. See following page, last note.]

If the children are baptized by laymen, let the priest perform what follows the unction*, not what goes before. If there be any doubt of a person's being baptized or confirmed, let the sacrament be administered without hesitation: that cannot be said to be repeated which is not known to have been done at all: 'let such as are found with [c]salt be baptized if there be any doubt of their baptism†: and in honour to baptism, let the water with which the baptism was performed be thrown into the fire, or be carried to the church to be put into the font. Let no deacon or inferior clerk baptize, or enjoin penance, but only priests, except in absolute necessity, when the child or sick man are in the utmost danger of death, and the priest is absent; or if he be present, yet cannot, or foolishly will not do it. We charge that the 'vessels in which any have been [so] baptized‡ be carried to church, and there applied to some necessary use, and not to any common purpose, out of reverence to the sacrament. We charge that the fonts in which children are baptized be of stone; or however, whole and decent, that they may occasion contempt or aversion in none, but be had in veneration by all.

[a] Lat. *forma*.

[b] This was the godfather or godmother's part§.

[c] It is evident that they who exposed children used to lay salt upon them. Whether they intended by this to signify that they were or were not baptized, I do not certainly find; but it seems probable that they meant thereby the child was baptized; yet this was not allowed to be a sufficient proof of it. I am persuaded that this was a constitution made about this time, or perhaps never properly made, but only designed as a rough draught; or else this was a hasty transcript.

2. This is the same with the second of Walter Reynold, A.D. 1322.

3. This is the same with the fourth of Walter Reynold, aforesaid.

* [immersionem, W.]

'† [et quod baptizentur expositi, de quorum baptismo probabiliter dubitatur, si inveniantur cum sale sive sine sale, quo casu ita dicatur: Si tu es baptizatus non te baptizo; sed si non baptizatus es, ego baptizo te in nomine Patris, et Filii, et Spiritus Sancti, W.]

'‡ [casulæ quibus noviter baptizati induuntur, W., cassulæ quibus noviter baptizati fuerint, Lynd. app. The chrysoms or baptismal garments are clearly meant: see below, A.D. 1236. 13.]

§ [See above, A.D. 785. 2. vol. i. p. 267 †.]

4. This is the same with the eighth of Walter Reynold, aforesaid, the last clause of the fifth is also added to the word confession, or rather the whole ninth and tenth.

5. This is the same with the third of Walter Reynold, aforesaid, but it wants the last clause.

6. This is the same with the seventh of Walter Reynold, aforesaid, with a clause added against rural deans hearing matrimonial causes: and though archdeacons and their officials are permitted to hear them, yet none but the bishop or his vicar to determine them.

7. This is the first of Walter Reynold, aforesaid, save that the particular crimes that disqualify for orders are not inserted; and a clause is inserted before the last, requiring rectors, commonly called parsons, to be subdeacons.

8. This is the seventh of Simon Mepham, 1330, with an unintelligible clause added.

9. This is the eighth of Simon Mepham, aforesaid; but it does not require the procurator to be instituted.

10. Let tithes, both predial and other, be paid entirely without difficulty or diminution, according to the canons. And we grant to every [d] parish priest that they have power of coercing the detainers of tithe within their parish, and of excommunicating them if they are contumacious after admonition: and let no layman by any length of time claim immunity from paying tithe, since according to the institutes of the canons, no layman can prescribe in point of tithes: let no deductions be made for expenses, especially in predial tithes.

[d] The parish priest, who officiated under the rector or vicar, was a more proper person to censure the people for neglecting to pay tithes than the rector or vicar himself, who was a party. See Const. of Edmund, 35. 1236.

11. This is the tenth of Simon Mepham, 1330, together with the conclusive clause of the fifty-first provincial constitution of Stephen Langton repeated.

[Postscript.] It seems to me, that these constitutions are near as old as those of Stephen Langton, though not made by him. They were plainly diocesan, and not provincial constitutions; for the seventh charges none to be ordained without "our" commendatory letters, &c., nor to execute their office "in our

bishopric." Whereas in Walter Reynold's constitutions the words are, "without letters from their own ordinaries," and "within our province." And in Const. 11 you have these words, "but by us, or our authority;" whereas in the tenth of Simon Mepham the words are, "by any one inferior to a bishop." It is evident that Walter Reynold and Simon Mepham use the provincial, these constitutions the diocesan style. It seems probable to me that many constitutions were first made in a diocesan synod, and then meeting with approbation, were established by a provincial authority, after proper alterations made in the words: and we shall find that sometimes such proper alterations were forgotten to be made. Yet there are some passages that may seem to import that the constitutions in which they are contained were provincial; if so, we must pronounce them a confused medley: however, the seventh seems to have been composed about this time, because it requires that rectors be ordained subdeacons. Afterwards, any clerk, though only in inferior orders, might be rector though not vicar.

## A.D. MCCXXIX.

### PREFACE. ARCHBISHOP WETHERSHED'S CONSTITUTIONS.

Richard Wethershed, by some styled the Great, now sat in the chair of Canterbury. There are in the Oxford copy twelve constitutions ascribed to him. All but the last are found in the constitutions of Richard, successor to Becket. Lyndwood has but five of them, which he ascribes to Wethershed; viz., the latter part of the first, the fifth, the ninth, which is the eighth of Wethershed's; and the sixteenth of Richard the first's, which is the eleventh of the second Richard, and the last of Wethershed's. It is very probable that those attributed to the former, and that are not in the Oxford copy, nor in Lyndwood, were indeed published by Wethershed. There can, I think, no doubt be made, that the former did make constitutions in that synod 1175, and that some of them ascribed to him are really his; yet it is impossible to distinguish which they are. But it is more probable that Richard the second should cite Pope Alexander the Third's letter to Roger of Worcester, now when both had been near fifty years dead, than that the first should do it while they were both living. Pope Alexander's letter to Roger in the decretals was A.D. 1177, after the first Richard's council: and though he might have wrote to him before this, yet this gives some umbrage to the contrary. It is more credible that there were ten prefaces in the year 1229 than in the year 1175; because Gratian's decrees confined the number to nine, and mention not that in honour to the Virgin, which makes the tenth preface, as they are reckoned in the fourteenth of the constitutions aforesaid. The others, or at least some of them, nay, all of them, excepting the first and fourteenth of the first set, and the last of the last set, might first be made by Richard, Becket's successor, and be renewed by Wethershed.

The Constitutions Provincial of Richard Wethershed, published at Westminster. He was consecrated archbishop of Canterbury A.D. 1229, in the fourteenth year of Henry the Third, and the third year current of Gregory the Ninth. He sat but two years. LATIN.

THE seven first constitutions of the two Richards are the same. See Sir H. Spelman, p. 103*. Oxford copy, p. 10. The ninth, and twelfth, thirteenth and eighteenth of the first Richard, are the eighth, and ninth, tenth and eleventh of the second Richard: the twelfth here follows.

Under pain of anathema, we forbid any physician [a]to give advice for the health of the body which may prove perilous to the soul, which is much more precious than the body. But when it happens that he is called to a sick man, let him first effectually persuade him to call for the physicians of the soul; that when the sick man has taken spiritual cure, he may with better effect proceed to the bodily medicines. Let not the transgressors of this constitution escape the [b]punishment appointed by the council. [Lynd., p. 330. Sir H. Spelman, vol. ii. p. 206. Wilkins, vol. i. p. 638 †.]

[a] Lyndwood instances in a physician's advising familiarity with women for the cure of some ill humours, but denies any cures to be wrought by this means, but what may be done by other methods.

[b] The punishment laid on physicians is a prohibition from entrance into the church till they have made satisfaction, according to c. 22 of the council of Lateran under Innocent the Third, from whence this constitution was taken.

* [Wilkins, vol. i. p. 476. Spelman and Wilkins give the constitutions of Abp. Richard, successor to Becket, as above, A.D. 1175, but neither the above nor any of the others are by them attributed to Richard Wethershed. Lyndwood in his gloss upon the above and four others calls them constitutions of Archbishop Richard.]

† [Spelman and Wilkins, as noted in the margin, give the above constitution concerning physicians, but as one made by Archbishop Eadmund, A.D. 1236, c. 34. See below, p. 141 †.]

## A.D. MCCXXXVI.

### PREFACE. ARCHBISHOP EDMUND'S CONSTITUTIONS.

Edmund Rich, called also Edmund of Abingdon, was advanced to the see of Canterbury about two years before this date: he was remarkable for his learning and piety, and zeal for reformation of popish scandals, by which he incurred the displeasure both of King Henry III. and the pope: he continued archbishop eight years, but spent great part of this time abroad, and at last died in a voluntary exile; but was canonized for a saint above two hundred years after his death. We hear nothing of the place where the following constitutions were made, or who were present at the making of them.

## A.D. MCCXXXVI.

### ARCHBISHOP EDMUND'S CONSTITUTIONS.

LATIN. [Lynd., p. 28. Wilkins, vol. i. p. 635*.]

1. By the power of the Holy Ghost, we in the first place strictly charge all ministers of the Church, especially priests, diligently to examine themselves by the testimony of their own conscience, in what state and for what end they entered into orders. For we denounce them in general suspended from their office who contracted an irregularity at the time of their entering into orders, or before or since, unless they are expressly dispensed with by [a]them† that have power to dispense. We conceive them to be irregular as to the premises‡, who have committed [b]murder, or have been [c]advocates in causes of blood§, simoniacs, transactors of simoniacal bargains, or who knowingly received orders from such as [d]were under that blemish¶, or that were ordained by schismatics, heretics, or such as were excommunicated [e]by name, [f]such as have been twice married, or married to such as were not virgins, correupters of nuns, excommunicates, such as get orders [g]by stealth, 'sorcerers||, burners of churches, 'and such like**. For it is certain, according to the traditions of the holy fathers, that they who being irregular do without dis-

* ["*Constitutiones provinciales S. Edmundi, Cantuariensis archiepiscopi, circa annum Domini* MCCXXXVI. *ut videtur editæ.* Ex MS. Coll. Otho A, xv. fol. 28, b. Collat. cum M. Lamb. n. 17 et Eliensi, n. 235.]

† [ab eo, W.]

‡ [Ne autem ignorans ignoretur, irregulares, qui secundum canones ab ordinibus prohibentur, et illos, qui dispensationis gratia admittuntur, seriatim duximus per ordinem specificandos. W. Johnson's translation agrees with Lyndwood's text.]

§ [Johnson with Lyndwood's text *omits* executores servorum in publicis administrationibus, W.]

¶ [qui labe illa infecti, ordines scienter susceperunt, W.]

'|| [et qui in susceptis taliter scienter ministrare præsumpserint. Item sortilegi et maxime, qui dæmonibus immolaverunt, W. Here Lyndwood's text has only 'sortilegos.']

'** [omnes tales, nisi nostrum vel superioris super hoc requisierint consilium, et requisitum habuerit, ab officii sui executione se noverint suspensos, W.]

pensation perform their ministrations, do it with presumption and danger.

[a] The constitution supposes that more than one had power to dispense in this case. (I mean according to Lyndwood, for the other copies speak in the singular number.) Yet it is a maxim with the canonists that no one can dispense with irregularities but the pope. Yet Lyndwood thinks that the bishop has power in many cases, especially as to inferior orders and sinecures, though not to subdeacons, priests, and deacons, and benefices with cure. He seems positive that bishops may dispense for adultery, and such crimes as do not hinder a priest from officiating, after he has confessed, and done secret penance, and yet none but the pope can dispense with bastardy, want of some notable bodily member, or the irregularity incurred by performing divine offices while one is under suspension, or other greater censure. It is evident that these irregularities were great snares to the consciences of men who were nice and scrupulous; they were perplexities to lawyers, and none but the pope and his creatures reaped any good from them.

[b] If the murder were utterly inevitable, no crime, no irregularity was incurred: if the murder were wilful, the pope only could dispense, and he himself could not do it without a strain: says Lyndwood, he could only dispense if the necessity were inevitable[1]: if he that committed the murder did it in lawful business, by chance, for want of care, or not for want of care; much more, if it were in unlawful business (as our Archbishop Abbot killed a man in hunting, which was always forbidden to men in holy orders) the pope only could dispense with the irregularity, so as to make him capable of orders, if he were a layman; or to restore him to the exercise of his function, if he were already ordained *.

[1] [*rather*, evitable.]

[c] To be advocate for the defendant, especially if death did not follow, was by some lawyers thought not to make men irregular, but Lyndwood thinks it most safe not to go so far, for which he cites John Athone.

[d] *A labe illa infectis*, so Lyndwood read, as appears by his note. Though all the copies have it *infecti*, yet the texture and coherence will scarce bear that reading.

* [In the above note Johnson gives a confused account of a gloss of Lyndwood which is exact and clear:

*Homicidas.* Intellige de voluntariis . . et non solum de eis qui facto hominem occiderunt; sed etiam si eorum præcepto sive consilio hoc factum sit. . . Et idem intellige de his qui ratum habent homicidium nomine suo commissum. . . Et idem est, si homicidium committatur ex necessitate evitabili. . . Secus si fuit omnino inevitabilis: nam tunc nec quoad peccatum nec quoad irregularitatem imputatur: . . Consimiliter irregularis est qui casu occidit, ubi etiam dando operam rei licitæ non adhibuit omnem diligentiam quam potuit et debuit: quod si dederit operam rei illicitæ, sive adhibuit diligentiam, sive non, est irregularis tam quoad ordines suscipiendos quam susceptos. . . Et nota quod cum homicida voluntario solus Papa dispensat, quod potest, licet cum difficultate hoc faciat. . . Item cum homicida ex necessitate evitabili solus Papa dispensat. . . In homicidio etiam casuali, ubi non adhibuit diligentiam, sive dederit operam rei licitæ, sive illicitæ solus Papa dispensat . . et hoc verum quoad ordines sacros, ut ad eos promoveatur, vel in eis valeat ministrare. Provinciale, lib. i. tit. 5. p. 29.]

[e] Not by a general excommunication only.

[f] The pope himself, says Lyndwood, by his regulated power cannot dispense with such an one so as to make him capable of deacon's or priest's orders, but only by the plenitude of his power; but if he be ordained in such a state, he can dispense with him as to the exercise of his function. The bishop may dispense with him as to inferior orders.

[g] That is, without the bishop's knowledge or examination, says Lyndwood. This can scarce be supposed practicable, but on supposition of vast numbers ordained by the same bishop at one time, which must indeed have often happened, while there were probably ten times as many clergymen in the nation as at present. If some one bishop, as he of Lincoln, do now ordain twenty upon the same day, it may be justly thought that in times of popery he might have occasion to ordain a hundred and fifty, or perhaps two hundred, and so give an opportunity to intruders; especially if the bishop or his officers were not very exact in their scrutinies, and see Const. 6. of Otto. But they are also by Lyndwood said to be ordained by stealth who procured two or more orders in the same day, or got superior orders *per saltum* without going through the several degrees of the inferior orders. I should think they might be said to be ordained *furtivè*, by stealth, who forged their titles, or falsified their age; but Lyndwood says nothing of this.

2. [h]We add our strict charge that all who take orders, while they remain under an habitual impenitence for mortal sin committed before*, or only for temporal gain, do not execute their office till they confess to the priest.

[h] This and the two following constitutions are omitted by Lyndwood, yet I cannot but judge this a most excellent admonition. The man who is guilty in this respect ought, I conceive, to confess his sin not to a priest only, but to all the world; and so he will, if he considers what he has done.

3. It hath been ordained in a [i]general council, that clerks, especially they in holy orders, who being suspended for their incontinence, do yet presume to officiate, be not only deprived of their ecclesiastical benefices, but for ever [k]deposed for their double crime, that a temporal punishment restrain them whom the fear of God doth not restrain. Let prelates who countenance such in that wickedness be liable to the same punishment, especially if they do it for the sake of money or temporal gain. Therefore it concerns you, the archdeacons, officials, and deans, to increase your diligence

* [qui in conscientia mortalis peccati prius perpetrati, W. Lynd. app. has qui in constantia, &c.]

in proportion to the danger which attends them that are guilty of neglect.

[i] Lateran, A.D. 1216. c. 14 *. The constitution of Edmund is almost the same with that of the Lateran council.

[k] *Deponantur* in the editions of the Lateran council aforesaid, and in Sir H. Spelman's copy; not *damnentur*, as in the Oxford copy †.

4. Let priests' concubines be monished by the archdeacons, and especially by the priests within whose parishes they dwell, that they either marry, or go into a cloister, or make their repentance as public as their crime. He who for the sake of money or acquaintance neglects this wholesome warning, shall be subject to the punishment now mentioned. If these [women] can be brought to neither by monition, after they have first been denied the kiss of [l]peace and the [m]bread blessed in the church, let them, and such as communicate with them, be excommunicated, in order to be delivered to secular justice, unless they repent.

[l] Or rather of the pax, that is, a table with the crucifix painted on it; for the apostolical kiss of peace was not now in use.

[m] Bread that has had a prayer said over it, viz., that it may be for the health of soul and body to the receiver.

[Lynd., p. 71.]

5. A great necessity of following peace lies on us, [n]my sons, since God Himself is the author and lover of peace, who came to reconcile not only heavenly but earthly beings; and eternal peace cannot be obtained without temporal and internal peace. We admonish and strictly charge [o]you, that having peace, as far as lies in you, with all men, you exhort your parishioners to be one body in Christ, by the unity of faith and by the bond of peace; that you compose all differences that arise in your parish with all diligence, that you solder up breaches, reclaim, as far as you can, the litigious, and not suffer the sun to go down upon the indignation of your parishioners.

[n] This seems to prove that the present constitutions are only a charge from the archbishop to the clergy of his own diocese, or constitutions published or made by him in a diocesan synod. Lyndwood might place

* [Conc. Later. IV. (Innocent III.), A.D. 1215, cap. 14; Concilia, tom. xxii. col. 1003.]

† [deponantur, W., from MS. Cott. Otho A. XV.; damnantur, MS. Lamb. et Eli.]

them among the provincial constitutions in honour to the prime see and diocese, though he knew them to be only diocesan constitutions.

[o] The rectors, vicars, and other curates of churches, Lyndwood. This was excellent advice to priests who had or might have such awe on the consciences of the people as the popish clergy of this age, but would be very unseasonably applied to the present English clergy, who rather want friends to persuade the people to be at peace with them upon any terms.

6. We wholly forbid clergymen the ill practice, by which all that drink together are obliged to equal draughts, and he carries away the credit who hath made most drunk, and taken off the largest cups: therefore we forbid all forcing to drink. Let him that is culpable be suspended from office and benefice, according to the [p]statutes of the council, unless upon admonition from his superior he make competent satisfaction. We forbid the publication of [q]scottales to be made by priests. If any priest or clerk do this, or be present at scottales, let him be canonically punished*.

[p] Lateran, 1216. c. 15 †.

[q] Scottales seem to have been public compotations at the charge of some for the benefit of others. [See Spelman's Glossary on the word *Scotala*.]

7. Because some laymen, out of an heretical leaven, under pretence of catholic piety‡, endeavour to break a [r]custom commendable in regard to the Church: now as we charge no wicked exactions to be made on these occasions, so we charge the pious and laudable customs to be observed, as it has been ordained in a [s]council. Let not a corpse be deferred to be buried on account of the [t]fee. But after the burial, if any thing be given, let it be accepted as an alms.

[r] The custom here meant is that of making oblations at weddings, churchings, baptisms, burials. This is among the constitutions of Richard Poore, bishop of Sarum, A.D. 1217. Sir H. Spelman, p. 141 §.

[s] Lateran, 1216. c. 67, from which some sentences here are clearly transcribed, as in many of the foregoing constitutions.

[t] The fee is here called *terragium* in Sir H. Spelman's copy, and in Richard Poore's constitution, p. 141; *mutagium* in the Oxford copy ¶. Lyndwood passes by this constitution.

* [See below, A.D. 1367. 2.]

† [Concilia, tom. xxii. col. 1003.]

‡ [puritatis, S. W. The Oxford copy has 'pietatis.']

§ [Wilkins, vol. i. p. 575, Constit. Ricardi ep. Dunelm., A.D. 1220. See above, p. 127, note *.]

¶ [pro alteragio, W., pro interragio, MSS. L. et E. In the corresponding part of Richard of Durham's constitutions, Wilkins (vol. i. p. 575) has 'pro alteragio,' without any various reading. See below, A.D. 1237. 4.]

[Lynd., p. 279.] 8. Farther we forbid the selling of masses, and [u]charge laymen and others to give or bequeath nothing in their wills for [x]annals or trentals of masses: and we forbid any bargains to be made by priests, or other transactors, directly or indirectly for this purpose. And we prohibit, under pain of suspension, that priests do at any time burden themselves with an immoderate number of annals, which they are not able honestly to discharge, and therefore must hire at a certain price mercenary priests, or else sell them to be performed by others for their own acquittal.

[u] The constitution of Richard Poore says, let not laymen be forced to give or bequeath, p. 141 *.

[x] Annals, or annuals, was a yearly mass said for a certain dead person upon the anniversary day of his death; trentals was thirty masses said every day for a month together after the death of any person. Lyndwood observes that in some copies it is *triennalibus;* and so Sir H. Spelman's copy has it. This imports masses said every day for three years together. If, says Lyndwood, the particle 'for' do imply exchange, appreciation, or bartering one thing for another, then this constitution proceeds rightly: but if it imply only the regard and devotion which the testator has to the sacrament, then the constitution will not hold. Archbishop Edmund was a man of very scrupulous notions, and I am of opinion that Bishop Lyndwood, with all his distinctions and evasions, could not reconcile this constitution to the old and present practice of the Romish clergy.

[p. 247.] 9. Let baptismal fonts be kept under lock and key for [fear of] [y]sorcery, as also the [z]chrism and the holy [a]oil. If he who has the charge of them be negligent in this point, let him be suspended from his office for three months. And if any wickedness have happened through his neglect, let him be liable to greater punishment.

[y] This was some vulgar superstition, which, says Lyndwood, is better concealed than explained.

[z] For anointing children in baptism.

[a] For extreme unction.

[p. 241.] 10. In every [b]baptismal church let there be a baptistery of stone, or, however, one that is [c]sufficient, handsomely covered and reverently kept, and not used for any other purposes. Let not the water in which a child has been baptized be kept in the baptistery above seven days. If a child

* [So Wilkins in the place last cited.]

in case of necessity have been baptized by a layman at home, let that water, in honour to baptism, be either thrown into the fire, or carried to church in order to be poured into the baptistery; and let the [d]vessel [in which baptism was performed] be burnt, or deputed to the [e]use of the church.

[b] That is, all churches that have lay people belonging to them, as collegiate and conventual churches had not. Some chapels, or lesser dependent churches, had not the right of baptism.

[c] Large enough for dipping such as are baptized in it, says Lyndwood.

[d] Here Lyndwood intimates that the vessel must be large enough to have the child dipped in it. And that it ought to be thrice dipped, though he makes neither of these particulars essential to baptism.

[e] For washing the church linen, says Lyndwood.

11. Let the priest always diligently enquire of the layman, who has baptized a child in case of necessity, what he said, and what he did; and if he find by full evidence that he did clearly perform the baptism in the form of the Church, let him approve the fact, whether he did it in Latin, French, or English; but if not, let him baptize the child as ought to be done according to the form of the Church. [Lynd., p. 242.]

12. We charge that [f]deacons presume not to administer penances or baptism, but when the priest is not able, or not present, or stupidly unwilling, and death is imminent to the child or sick person. But if a child be baptized by a layman, let [g]what goes before the immersion, and what [h]follows after, be fully supplied by the priest. [p. 243.]

[f] Not only deacons but laymen might not only baptize but hear confessions in case of necessity, causa 33. q. 3. c. 85. Lyndwood says a woman might do either; though none but the priest could absolve.

[g] That is, the exorcisms and catechisms, says Lyndwood; by the latter he means the questions put to the child baptized, viz., "Dost thou renounce," &c.

[h] That is, the chrism, the putting on the chrysom, or white garment, and the delivery of the wax-candle, says Lyndwood.

13. Let the [i]chrysoms be made use of for the ornaments of the church only; let the other ornaments of the church which have been [k]blessed by the bishop be applied to no common use. And let the archdeacon in his visitation diligently enquire whether this be observed. [p. 33.]

[j] See the foregoing note; chrysoms might be used for the making or mending surplices, amits, albs; or the wrapping up the chalices, covering the crosses, &c.

[k] The altar-cloths, &c., were to be blessed by the bishop. See *de Consecr. distinct.* i. c. 46.

[Lynd., p. 307.] 14. If it be certain that the woman in childbirth is dead, let her be [l]cut open in case the child be thought to be alive; but let care be taken that the [m]mouth of the woman be held open.

[l] If the mother were not cut open there are two seeming ill consequences, says Lyndwood: one, that the child would be murdered; another, that the child, though unbaptized, would be buried in the holy ground with its mother; and though doctors differ as to this last point, yet Lyndwood allows if it be certain that the child is alive, that the mother ought to be cut up.

[m] For fear the child die for want of breath, says Lyndwood; such was the philosophy of this age.

[ib.] 15. Let [n]women be admonished to nurse children with caution, and not lay them near themselves by night, while they are young, lest they be overlaid; nor leave them alone in a house where is fire or water, without one to look after them; and let them be reminded of this every Lord's day[o].

[n] Mothers and fathers too had great reason to be careful in this point; for they who had been the occasion of their children's death were obliged to a very severe penance; in some cases they were obliged to go into a monastery, in others to do penance for three years; and even seven years, if any sin, as for instance drunkenness, were the occasion of their overlaying their children.

[o] Here follow in Sir H. Spelman's copy three constitutions of Archbishop Sudbury, and a fourth, the same with the twelfth of Archbishop Walter *; this last is also in the Oxford copy. Richard Poore, bishop of Sarum, has also the two following constitutions, p. 145.

[20. W.] [Lynd., p. 328.] 16. The priest at confession is to have his face and eyes looking towards the ground, not in the countenance of the penitent, especially if it be a [p]woman; and let him patiently hear whatever she says, and support her in the spirit of lenity, and persuade her by all ways and means to make a full confession; otherwise the confession is none at all. Let him enquire after usual sins, but not after unusual, unless it be at

* [Wilkins gives the next four constitutions as Spelman.]

a distance, and indirectly; that such as know may be put into a method of confessing, and such as do not know may not have an opportunity of learning to sin. Let not the priest ask the names of the persons with whom the penitent hath sinned; but after confession he may enquire whether he were a clerk or a layman, a monk, priest, or deacon; and let the greater crimes be reserved [to be confessed] to [q]superiors; such are murder, sacrilege, sins against nature, incest, deflowering of virgins and nuns, laying violent hands on parents and clergymen, breach of vows and the like. But there are cases in which the [r]pope alone, or his legate, has power of absolving. Yet at the hour of death absolution is to be denied to none; but upon a condition that they present themselves to the apostolical presence if they recover; yet they who are guilty of such crimes are always to be sent to the bishop, or his penitentiary. [s]And let the persons thus sent bring with them letters containing the quality and circumstances of the sin; or let the priest come with them, else let them not be admitted.

[p] The woman, says Lyndwood, shall kneel or sit at the confessor's feet, and of one side of him.

[q] By a constitution attributed to Archbishop Langton (but which seems to me of a later date) in the Oxford copy, p. 10, sins reserved to the hearing of superiors are, public usury, burning of houses, false witness, forswearing upon what is holy to the benefit or damage of others, sorcery, forging of seals or charters, coining false money, obstructing of testaments, committing crimes for which men are actually under the sentence of the canon, striking clerks, treason, heresy, simony, subposition of children to the disinheriting of others, overlaying children, procuring abortion by potions, or smothering a child after it is born, suffering a child by negligence to fall into the fire or water, laying violent hands on parents, sodomy, mortal treachery against one's lord, sacrilege, notorious adultery, and manifest breach of faith. If a man is excommunicated by any one that is not his bishop, he should be sent to him, or desire letters to him from his superior, in order to procure absolution.

[r] Cases reserved to the pope or his legate, are, says Lyndwood, laying violent hands on clergymen or monks in a cruel manner, burning of churches, falsifying the pope's bull, or using a bull so falsified, communicating with one excommunicated by the pope, or partaking with him in his crimes, &c. Of old the priest's blessing a second marriage was a crime of the same nature, but the bishop dispensed with this in Lyndwood's time.

[s] This is unnecessary, says Lyndwood, for the bishop is priest to the whole diocese.

[21. W.] [Lynd., p. 277.] 17. [t]Let there be two or three men in every deanery who have God before their eyes, to denounce the public excesses of [u]prelates or other clergymen, at the command of the archbishop or his [x]official.

[t] This constitution increases my suspicion that the archbishop intended all these rules for his own diocese only: if, as Lyndwood supposes, this constitution related to the whole province, certainly some notice would have been taken of the suffragan bishops, and the informers directed principally to denounce their excesses to the primate. All Lyndwood's difficulties on the text of this constitution vanish on supposition that it concerns the diocese of Canterbury only.

[u] R[ichard], bishop of Sarum, and R[ichard], bishop of Durham, appointed such inquisitors in their dioceses, almost in the same words, Spelman, vol. ii. p. 145, 170*.

[x] The archbishop's official had the immediate jurisdiction in the diocese, as well as the metropolitical jurisdiction through the whole province, till Archbishop Winchelsey, above sixty years after this, created a commissary for the diocese of Canterbury.

[22. W.] [Lynd., p. 160.] 18. We forbid any man to detain a [y]pledge after he has received the principal out of the profits, after a deduction of expenses: for that is usury.

[y] The pledge in this case must be supposed to be lands, cattle, she-slaves, or the like fruitful things.

[23. W.] 19. Let sorcerers[z], such as invoke the help of devils, such as abuse sacraments, and sacramentals, or convert them to profane uses, incendiaries, rappercest, such as maliciously obstruct the executions of reasonable testaments, be generally with solemnity excommunicated on three of the greater feasts every year.

[z] The three following constitutions are not in Lyndwood, but are found in those of Richard Poore, bishop of Sarum, p. 146, and 148‡.

[24. W.] 20. That ecclesiastical censure may not grow into contempt, we charge, that all who knowingly communicate with such as are publicly and by name excommunicate, be laid under the same sentence§, till they repent, saving the tenor of the canon[a].

* [Wilkins, vol. i. p. 578; see above, p. 127, note *.]

† [raptores publici, W.]

‡ [Spelman, vol. ii.; Wilkins, vol. i. p. 578-80.]

§ [For a more exact wording of the rule and references, see Wilkins, vol. i. p. 637, and note a.]

[a] That is, causa 11, quæst. 3. c. 103, all such are there excepted who converse with excommunicates through ignorance, fear, or necessity.

21. We add, that when the eucharist is to be carried to a sick man, the priest have a clean, decent box, and in it a very clean linen cloth, in which to carry the Lord's Body to the sick man*, with a little bell going before, to stir up the devotion of the faithful by its sound, and let the priest go on this occasion with his stole, and in his surplice, if the sick man be not too far distant†. And let him have a silver or tin vessel, always to carry with him to the sick, appropriated for the special purpose, that is, for giving the washings of his fingers to be drunk [by the sick man[b]], after the taking of the eucharist‡. [25. W.]

[b] *Ægro* is not expressed in this decree of Archbishop Edmund, but it is in that of bishop Poore, from which it is transcribed, and is necessarily implied here. Horrible indignity to God and man! to take the sacramental cup from the people, to which God had given them a right, and instead thereof to give them the washings of the priest's hands.

22. Our will is, that this constitution be inviolably observed; that if the rector of a church die, and leave [his [c]church without proper priestly vestments, or books, or both, or] the church houses ruined or decayed, such a portion be taken from his [d]ecclesiastical goods as may be sufficient to make good and supply these defects of the church. We ordain the same concerning those vicars who, upon paying a moderate pension, have the whole profits of the church. For since they are bound to the aforesaid reparations, such a portion ought to be reckoned amongst the debts. But let a reasonable regard be had to the value of the church in setting out this portion. [26. W.] [Lynd., p. 250.]

[c] The words enclosed are only in the Oxford, and Sir H. Spelman's copy. An annotator to the Oxford copy observes that vestments were

* [Johnson *omits* linteo mundo superposito, et lucerna præcedente, nisi æger valde remotus fuerit, et cruce similiter, si fieri potest, nisi crux fuerit ad alium ægrotum deportata, W. quod hic dicitur de dilatione crucis hodie non servatur, E.]

† [Habeat quoque secum sacerdos orarium sive stolam, quando cum eucharistia, sicut diximus, vadit ad ægrotum, et si æger remotus non fuerit, in superpellicio decenter ad ipsum accedat. W.]

‡ [Ut in eo ægro dare valeat, post sumptam eucharistiam suorum loturam digitorum, W. Compare above, A.D. 1222. c. 6.]

not in his time to be found by the rectors, and he cites Archbishop Winchelsey's constitution to this purpose*. This was perhaps the reason that Lyndwood omits the words aforesaid in this constitution.

[d] Lyndwood here queries whether such defects are to be made good out of the paternal estate of the predecessor in case his ecclesiastical goods are not sufficient: and answers, yes, if he hath improved his paternal estate out of his ecclesiastical revenue, or hath neglected the concerns of the church through an immoderate regard to his own interest. Upon this foot the predecessor leaving a paternal estate only is not subject to dilapidations.

[27. W.] [Lynd., p. 23.]

23. Let no rector of a church subject to us [e]presume to sell the tithes of his church not yet become due, before the Annunciation of the Blessed Virgin; from which day the fruits of custom ought to go for the paying of the debts and legacies of the rectors, though they die before the fruits become due†.

[e] But what if the dying rector do presume to sell the fruits of the following autumn, says Lyndwood, is the sale good? He inclines, that it is not good, as being contrary to this constitution: but he refers to several doctors that were against him. This is likewise taken from the constitution of Richard Poore, p. 149, 150. There was a like constitution made by Richard, bishop of Durham, some time before this. See Sir H. Spelman, vol. ii. p. 175‡. But, by a constitution of Peter Quevil, bishop of Exeter, A.D. 1287, if the incumbent lived to the first Sunday in Lent§ he might give the tithes of next harvest, ibid., p. 389. In the diocese of Winchester it was necessary that the rector lived till Maundy Thursday, ibid., p. 451, 452¶.

[28. W.]

24. As it has been forbidden in a [f]council, so we forbid any pension, great or small, to be given to any one fraudulently out of the profits of a church. And because fraud and simony used to be committed in relation to such pensions, therefore we to obviate such evils, do sometimes take an oath both of the presenter and the presented, that no unlawful promise or bargain hath been made||.

[f] The Lateran council is cited for this saying in a decretal of Innocent

* [A like note is given from MS. E. by Wilkins, who notwithstanding has the above enclosed words in his text.]

† [This agrees with Lyndwood's text; in Wilkins several words are omitted.]

‡ [Wilkins, vol. i. p. 580.]

§ [Rather the Sunday in Midlent; see Wilkins, vol. ii. p. 157.]

¶ [Wilkins, vol. ii. p. 297.]

|| [Præsentantis et præsentati præcipimus interdum juramentum, quod nec promissio nec pactio illicita intervenerit et quod ecclesia non debet amplius obligari, quam prius fuit obligata. Similiter inhibemus ne quis, qui prius ecclesiæ fuit persona, in eadem ecclesia fiat vicarius. W.]

the third, *Decretalium*, l. iii. t. 10. c. 9. The editors in the margin say the seventh chapter of the Lateran council, 1179*, under Alexander the Third is here meant, yet that does not fully come up to the point.

25. We admonish rectors of churches that they do not endeavour to remove annual chaplains without reasonable cause, especially if they are of honest life, and have a laudable testimony of their conversation. [29. W.] [Lynd., p. 810.]

26. If scandal arise by reason of the incontinence of a parish priest, since the rector ought to be very watchful in this point; if therefore we come to the knowledge of it by common fame, or enquiry, earlier than the denunciation of the rector, then he shall be punished, as conscious, at the discretion of his superior. We pass the same sentence as to perpetual vicars: 'and we decree both parsons, that is, rectors and vicars, and also parish priests† to be severely punished, unless they be very vigilant in denouncing the excesses, of this sort especially, for which clerks are found remarkable. [30. W.] [Lynd., p. 311.]

27. Let the priest often caution the people, and forbid under pain of anathema any married person to enter into religion, or to be received, but by ourselves, or our licence. [31. W.]

28. Let the priest warn women not to make vows, but with great deliberation, or the consent of their husbands, and the advice of a priest who is capable of giving them counsel. [32. W.] [Lynd., p. 204.]

29. We charge that laymen be often forbid to make their wills without the presence of a parish priest, as they desire that their wills be fulfilled: we also forbid priests to make their wills by a lay hand‡. [33. W.]

30. That is no marriage where there is not consent of both parties, therefore they who give girls to boys in their cradles do nothing, except both of them consent after they come to years of discretion. We therefore by this decree forbid any to be married for the future, before both are come to the [g]age appointed by laws and canons, unless in case of [h] urgent necessity for the good of peace[i]. [Lynd., p. 272.]

* [Cf. Concil., tom. xxii. col. 221.]

' † [et tam personas, et biennios, quam annuos sacerdotes, W.; rectores, *addit* E.]

‡ [The constitution concerning physicians is given instead of that on marriage both by Spelman and Wilkins, who nearly agree throughout this series.]

[g] The age for espousals is seven in both sexes; for finishing the contract, twelve in the female sex, and fourteen in the male.

[h] Who is judge of this necessity? The diocesan, without whose licence they ought not to make contracts or dissolve them.

[i] Here follows in Sir H. Spelman's copy Archbishop Wethershed's constitution concerning physicians*.

[35. W.] [Lynd., p. 214.] 31. [k]Because too great diversity of religions brings confusion into the Church of God, we charge that they who will found a new [religious] house or hospital, take from [l]us the rule and institution of it; that they [who are to be received into it] may live regularly and religiously; [m]and we strictly forbid any men or women to be made close recluses anywhere without special licence of the diocesan, who is to judge of the places, the manners, the quality of the persons, and the means by which they are to be maintained. And let no secular persons by any means sojourn in their houses without a manifest and honest cause†.

[k] The beginning of this constitution is taken from Lateran council 1216, c. 13‡, where the pope reserves to himself the institution of new religions, that is, new orders of monks, friars, and recluses of all sorts; the archbishop in this claims the inspection of religious houses to be built anew, that they might be *ex approbatis*, as the canonists speak, that is, that their rule of life might be one of those that was already approved by the pope. And hospitals were always under the inspection of the bishop.

[l] From the ordinary of the place, says Lyndwood, but I follow the two other copies§. Lyndwood seems to alter his text upon a supposition that this was a constitution for the whole province; whereas it was more probably intended for his diocese only.

[m] What follows is in Lyndwood only. By the close recluses Lyndwood understands hermits and anchorites; but sure there never were any women of this sort; and the following words suppose them to dwell in monasteries. And farther, Lyndwood says, some read *sociis* for *locis*, and therefore could not understand hermits to be here meant.

[36. W.] [Lynd., p. 234.] 32. At the celebration of mass, let not the priest, when he is [n]going to give himself the host, first kiss it; because he ought not to touch it with his mouth before he receives it. But if (as some do) he takes it off from the [o]paten, let him after mass cause both the chalice and paten to be rinsed in water, or else only the chalice, if he did not take it from the paten. Let the priest have near to the altar a very clean

* [See above, p. 127.]
† [Not in Wilkins.]
‡ [Concilia, tom. xxii. col. 1002.]
§ [a nobis, W.]

cloth, cleanly and decently covered, and every way enclosed to wipe his fingers and lips after receiving the sacrament of the altar*.

[n] *Pacem daturus*, says Lyndwood, and he speaks in such a manner as if the holy kiss were used in these ages, and that the priest began it by kissing some man: the time of doing this was just before the priest's receiving, whether the kiss were given to a man or to a picture, therefore Lyndwood's reading, and that of the other, differ in words only. Why it was forbid the priest to kiss the host before he gave the pax I know not, except it were that it was a new voluntary ceremony; if so, it were to be wished that all bishops from the beginning had been as careful to forbid them as our archbishop was. Perhaps the priest was forbid to kiss the host, lest some small particles should stick to his lips, and afterwards insensibly drop on the ground.

[o] Without taking it up in his fingers, and so putting the paten to his mouth, as most of the religious do, says Lyndwood †.

33. Let the priests admonish women that are big of child in their parish, that when they apprehend the time of their delivery to be at hand, they take care to have water in a readiness for baptizing the child, if necessity require. And let them confess to the priest on account of their imminent peril, lest being seized on a sudden a priest be not to be had when they desire it. [[p]And in some places they also receive the eucharist, which is a laudable practice ‡.] [37. W.] [Lynd., p. 53.]

[p] This is only in the Oxford copy, and seems to be an annotation.

34. It is provided by the sacred council, that if patrons, advocates, [q]feudatories, or [r]vidoms§ presume to kill or maim a rector, vicar, or clerk of that church [in which they are interested] either by themselves or by others, that then the patrons wholly lose their patronage, the advocates their advowson, the feudatories their feofment, and the vidoms the vidomship, [[s]to the fourth generation[1].] And let not the posterity of such be received into any college of priests [[t]to the fourth generation[2]] nor have the honour of a prelacy in any house of regulars. And we will often have this denounced in churches[u]. [38. W.] [Lynd., p. 307.] [1] [so, W.] [2] [om. W.]

* [sacramenti salutaris, W.]

† [*Quidam faciunt.* Maxime religiosi aliqui, licet non omnes. Provinciale, p. 235.]

‡ [et in quibusdam locis tunc sumunt eucharistiam, *addit* E.]

§ [seu vicem gerentes alicujus domini, W.]

[q] Such as hold lands in fee of the church, says Lyndwood, otherwise I should have supposed that it signified such laymen as had churches and tithes granted them in fee, on condition that they found a priest to officiate.

[r] Lyndwood supposes these to be the same with patrons*: else I should have been of opinion that they were the heirs of such as founded religious houses, and claimed a right or interest over their estates and the churches belonging to them, or the proxies of such heirs. But the truth is, this whole constitution is but part of c. 45 of the Lateran council, 1216†. And we are not to wonder if these foreign terms are not exactly adapted to the English laws and customs.

[s] This is not in Lyndwood, but in the other two copies, save that Sir H. Spelman has *denunciationem* for *generationem*.

[t] This is only in Lyndwood.

[u] Here follows, in Sir H. Spelman and the Oxford copy, the constitution of Walter Reynolds, concerning confirmation‡. The two constitutions here following are not in Lyndwood.

[40. W.] 35. As to tithes, we command them to be paid of all things which are yearly renewed, to the churches to which they are due, especially those which are due by the law of God, and the approved custom of the place; and so that the churches be not defrauded of the tenth part on account of the wages of servants or harvesters. And we grant that the detainers of tithes, if upon a third admonition they do not reform their error, be struck with anathema by the [x]chaplains of the places till they make fit satisfaction. And when they who detain or steal tithes come to shrift, let them not be admitted, unless they make satisfaction to the priest to whom the tithes are due by themselves, or by the hands of their priest [to whom they confess.] § And let predial and other tithes be paid without difficulty or diminution in an entire manner, according to the institutes of the canons. And we grant that [y]parish priests have power of censuring the detainers of tithes in their parishes, and of excommunicating them if they are contumacious, and do not reform upon admonition. And let no layman by any length of time claim to himself an immunity against paying tithes, since a lay-

* [*Vicedomini.* Vicedominus ponitur quandoque pro patrono .... quandoque pro vicario in temporalibus generali.—Provinciale, p. 307.]

† [Concilia, tom. xxii. col. 1030.]

‡ [The next constitution in Wilkins has this title:

39. De confirmatione puerorum et de his qui eos tenere debent.]

§ [nisi per se vel per manum sacerdotis sui, ei, cui decimæ debentur, satisfaciant competenter.]

man, according to the institutes of the canons, cannot prescribe [against] tithes[z].

[x] By chaplains I understand curates substituted by the non-resident incumbent.

[y] By parish priest is, I suppose, meant priests who served cures under resident incumbents. Chaplains and parish priests are ordered to pass these sentences, that the incumbent might not be judge in his own case.

[z] Here follows a long note of a lawyer in both copies *.

36. Upon terror of anathema we forbid any constable of a castle, or forest, or the bailiff of any potentate, to invade the possessions of clerks, religious, or any other persons, or to molest them with any unjust exactions or oppressions. If any contrary to [our liberties and] this prohibition, to the loss of his own salvation (which God avert) do offend herein, and not amend upon admonition, we charge that their lands be forthwith laid under ecclesiastical interdict by the archdeacon: if after that, they being hardened return not to amendment, let them be excommunicated with bells tolling and candles lighted after a canonical admonition first given. And our will is, and we strictly charge, that archdeacons and their ministers give mutual assistance to each other when they are required to it by such as put this in execution †. [41. W.]

37. We suspend those from the exercise of their orders who were not born in lawful matrimony, and were ordained without a [a]sufficient dispensation, as also those who were ordained by such as were not their proper bishops, without the licence of those that were their proper bishops or [b]prelates, till they have obtained such dispensation. And we decree, that they who when they were ordained were conscious to themselves of their being in mortal sin formerly committed, or who took orders only for temporal gain, do not exercise their office, unless they are first cleansed from this sort of sin by the sacrament of penance. [Lynd., p. 26.]

[a] The pope only, says Lyndwood, can dispense as to the superior orders,

* [The same note upon the excommunication of notorious detainers of tithes is in Wilkins, vol. ii. p. 639.]

† [Here end the Constitutions of Edmund both in Spelman and Wilkins.]

the bishop as to the inferior: and the pope's or bishop's knowingly ordaining such a person, was a sufficient dispensation, in Lyndwood's opinion, though other doctors were of another sentiment.

[b] This is said in relation to religious houses, exempt from the bishop's jurisdiction, whose prelates could give them letters to go to what bishop they pleased for ordination.

## A.D. MCCXXXVII.

### PREFACE. LEGATINE CONSTITUTIONS OF OTTO.

King Henry the Third being none of the most sagacious or constant princes, invited Otho, or Otto, deacon cardinal, to come over into England, as legate *a latere* from Pope Gregory the Ninth, without the consent of the great men, and to the great resentment of Edmund, archbishop of Canterbury*, and to the grief and concern of the main body of the English nation. Yet many went as far as Paris with rich presents to meet and ingratiate with him.

Otto's behaviour was very engaging, especially because he did not seem so greedy of money and bribes as Roman courtiers generally were; and he reconciled some animosities between persons of great honour and dignity. The king doted on and even adored him: he met him at the sea-side, and bowed his head down to the legate's knees, declaring that he would do nothing in point of government without consent of the pope or legate.

The clergy stomached the coming of this legate more than the rest of their countrymen; especially because he took upon him to bestow all vacant benefices and dignities on his own followers, and threatened the pluralists and such as were illegitimate with deprivation.

The king carries the legate with him to York, whither he called an assembly of the great men to meet him and the legate. The king of Scots also came thither, and by Otto's means a peace was concluded betwixt the two crowns. The legate shewed an inclination to accompany the king of Scots

* [Dictum est autem, quod archiepiscopus Cantuariensis Edmundus regem talia facientem increpavit, præcipue de vocatione legati, sciens inde in suæ dignitatis præjudicium, magnam regno imminere jacturam.—Matt. Paris. Hist. Angl., *sub* A.D. 1237. All the history contained in Johnson's preface is taken from the same source, whence long extracts are also given by Spelman and Wilkins as an introduction to the constitutions.

in his return home; but King Alexander was of a contrary temper to our Henry, and told him, "That there was, God be thanked, no occasion for a legate in Scotland; that there had been none there in time of his ancestors, nor would he himself endure it. Have a care," says he, "how you come into my country, the inhabitants of Scotland are savages, nor can I myself restrain their thirst after blood; they lately intended to drive me out of my kingdom." Yet a kinsman of the legate stayed some time with the king of Scots, and received some favours from him.

Some of our noblemen as well as bishops fawned much upon the legate. Peter, bishop of Winchester, when he understood that Otto was to pass the winter in England, sent him fifty fat oxen, a hundred quarters of the best wheat, and eight pipes of the strongest wine. The cardinal had made up a breach between him and some men of note.

But what I am chiefly to observe is, that the legate summoned the archbishops and bishops to a national council to be holden at London on the octaves of St. Martin. They came at the time appointed, tired with a long journey, terrified with a tempest which then happened. On the first day the legate did not appear in council*; but at the bishops' request the decrees intended to be passed were privately communicated to them. The next day the legate appeared with great pomp, sitting on a lofty throne erected with great timbers at his own direction, the archbishop of Canterbury on his right hand, of York on his left. For though the latter renewed the old claims of his see, yet to no purpose, though the legate rather evaded than determined the question. There were at the cardinal's request two hundred armed soldiers and servants placed privately by the king's command, to guard the legate against insults, and three earls and some of the king's retinue attended him to and from the

* [Non comparuit legatus, quia episcopi rogaverant eum, ut ea die daretur eis copia inspiciendi quæ proposuit statuere, et secum super his deliberare, ne aliquid in præjudicium eorum statuere attentaret. Altera igitur die constitutis in secretis et abditis locis militibus armatis et servientibus circiter ducentis, quos ei ad instantiam precum suarum dominus rex commodaverat: timebat enim valde sibi, eo quod dicebatur, eum nimis velle desævire in eos, qui plura habebant beneficia, et præcipue in illegitimos. Matth. Paris, sub anno, quoted by Spelman and Wilkins. The same reason is afterwards given for the attendance of the two earls and some of the king's retinue.]

council. Yet a prohibition was sent from the king on the second day to inhibit the council from enacting any thing against the king's crown and dignity*. The same day the archdeacon of Canterbury read the authentic instrument of Otto's legation publicly in council; and at the king's request a bull was then also read for keeping the feasts of St. Edward, and by the pope's command the canonization of St. Francis and St. Dominic was there also notified.

And whereas a notion prevailed that legatine constitutions were of force only during the stay of the legate, the secretary of Otto read a decretal of the present pope declaring the contrary. See *Decretal.*, lib. i. tit. 30. c. 10.

The legate opened the synod by lifting up his voice like a trumpet, says the historian, with the words of the Prophet Ezekiel†, "In the middle of the throne and round about were four animals full of eyes behind and before," which he considered as an emblem of episcopal care and circumspection; and after he had finished his discourse, he caused the following decrees to be read. [Ezek. i. 5; Rev. iv. 6.]

* [Et appellatum est ex parte Eboracensis pro jure suo, quod sibi vendicabat. Lecto igitur solenniter, evangelio, scilicet "Ego sum pastor bonus," sicut moris est, dictisque collectis propriis ab ipso legato, et cantato "Veni Creator Spiritus," appellatoque ab Eboracensi, ut dictum est, sederunt juxta legatum duo archiepiscopi, Cantuariensis a dextris, Eboracensis a sinistris, quibus dixit legatus, volens ipsam controversiam pacificare, neutrius tamen juri derogando: "In bulla domini papæ stat imago Pauli a dextris crucis in medio bullæ figuratæ, et Petri a sinistris; nulla tamen inter tantos sanctos est orta unquam contentio, ambo enim sunt in coæquali gloria. Veruntamen propter Petri Clavigeri dignitatem, et apostolatus principatum, necnon et cathedralem dignitatem, cum prioratu vocationis, merito a dextris crucis ejus imago collocanda videtur. Sed quia Paulus credidit in Christum, quem non vidit, a dextris figuratur. Beati enim, qui non viderunt, etc. Sic dominus Cantuariensis, totius Angliæ primas, et, qui præest antiquissimæ ac nobilissimæ ecclesiæ Cantuariensi, necnon et Londonensi, quæ est S. Pauli, non sine ratione a dextris est collocandus." Et extunc sequentibus diebus sedit Cantuariensis a dextris, Eboracensis a sinistris. Secundo autem die concilio jam incepto, missi sunt ex parte domini regis comes Lincolniensis Johannes, et Johannes filius Galfridi, et Willielmus de Raele, canonicus S. Pauli, ut dicto legato ex parte regis et regni inhiberent, ne ibi contra regiam coronam et dignitatem aliquid statuere attentaret. Et remansit ibi, ut hoc observaretur, Willielmus de Raele, indutus cappa canonicali et superpellicio, aliis recedentibus.—Matth. Paris, Spelman, Wilkins.]

† [The authority is not named by Matthew Paris.]

## A.D. MCCXXXVII.

### LEGATINE CONSTITUTIONS OF OTTO.

[Mat. Paris. in ann. Sir H. Spelman, vol. ii. p. 218. Wilkins, vol. i. p. 647.]

A COUNCIL of all England holden at London in the church of St. Paul on the morrow after the octaves of St. Martin, A.D. 1237, in the twenty-first year of the reign of Henry the Third, [a]Otto, legate-cardinal of St. Nicholas *in carcere Tulliano*, legate of Pope Gregory the Ninth, the archbishops Edmund of Canterbury and Walter of York sitting with him, as also the other bishops of England, &c.

[a] It was, I suppose, this same Otto who came legate twelve years before, when his business was to obtain for the pope two prebends in every cathedral, two places for monks in every monastery. But the whole realm assembled in parliament rejected this unreasonable demand*.

[Mat. Paris. in an. J. Athon, p. 3] Sir H. Spelman, vol. ii. p. 221. [Wilkins, vol. i. p. 649†.] [Lev. xix. 2; 1 Pet. i. 16.]

Because holiness becomes the house of God, and it is said by the Lord to His ministers, "Be ye holy, for I the Lord your God am holy," the craft of the enemy of mankind is busy to lessen and destroy sanctity and reformation. For he does both while he hinders or retards the consecration of churches in many places, and while he vitiates or corrupts the life and conversation of many ministers, by setting them against all the canons and statutes of the holy fathers, and in general against all the improvements of Christianity with all his might, so that they do not with dignity perform their function: therefore all Christ's faithful people must resist him in faith with a strong hand, and must use recruited and new forces for the defeating of his attempts. So Isaac first took care to open again the wells which Abraham's servants had dug, and then to dig others entirely new.

* [Cf. Matt. Paris, A.D. 1226.]

† ["*Constitutiones Othonis cardinalis.* Collat. cum MS. Regio 9 B. ii. et MS. Hatton. xxiv. et edit. Gul. Lyndwood, Oxon. MDCLXXIX. et MS. Lamb. 8vo. n. xvii."]

Wherefore we, Otto, by divine miseration deacon-cardinal, &c., being deputed by the apostolical see to the [b]legatine office in England, supported by the divine help, and by the suffrage and consent of the present council, esteemed some things fit to be ordained in virtue of the office committed to us, which we have digested and distinguished into certain articles here below, for the corroborating and reforming the state ecclesiastical, saving other canonical institutes which we will and command reverently to be observed.

[b] Legates were of three sorts: 1. There was the *legatus natus*, such were the archbishops of Canterbury, Rheims, &c. This seems to me to have been a mere empty title; for I know no one thing which our primates, before the pope gave them this feather, did not upon occasion think themselves enabled to, as well as after. Theodore and Lanfranc exercised as great an authority over the archbishop of York, as any of their successors who called themselves *legati nati*. 2. There were *legati a latere*, such was Otto. Such legates could absolve them that were excommunicate for laying violent hands on clerks, call synods, grant absolutions and dispensations in cases reserved to the pope, and every thing that the pope if present could do, excepting translation of bishops, erecting archbishoprics, dividing or uniting bishoprics; and though they might fill any vacant dignities or benefices, and hear any appeals, yet such were excepted as the pope before had committed to special legates, and these special legates were the third sort. See Decretal., lib. i. tit. 30. per tot.

1. The dedication of [c]royal temples is known to have taken its beginning from the Old Testament, and was observed by the holy fathers in the New Testament, [d]under which it ought to be done with the greater care and dignity, because under the former sacrifices of dead animals only were offered, but under the latter the heavenly, lively and true Sacrifice, that is Christ, the only-begotten Son of God, is offered on the altar for us by the hands of the priest; therefore the holy fathers providently have ordained that so sublime an office should not be celebrated in any place but what is dedicated, except in case of necessity. Now because we have ourselves seen and heard by many that so wholesome a mystery is despised, at least neglected by some, (for we have found many churches and some cathedrals not consecrated with holy oil, though built of old,) we therefore being desirous to obviate so great a neglect, do ordain and give in charge that all cathedral, conventual, and parochial churches,

which are ready built, and their walls perfected be consecrated by the diocesan bishops to whom they belong, or others authorized by them within two years: and let it be so done within a like time in all churches hereafter to be built: and lest so wholesome a statute grow into contempt, if such like places be not dedicated within two years from the time of their being finished, we decree them to remain[e] interdicted from the solemnization of masses, until they be consecrated, unless they be excused for some reasonable cause. Further by the present statute we strictly forbid abbots and rectors of churches to pull down ancient consecrated churches, without the consent and licence of the bishop of the diocese, under pretence of raising a more ample and fair fabric. Let the diocesan consider whether it be more expedient to grant or deny a licence: if he grant it, let him take care that the work be finished as soon as may be: which we ordain also in relation to such as are already begun. We think not fit to ordain any thing concerning little chapels, leaving the time and manner of their consecrations to the canonical definitions.

[c] John Athon, not the present legate's secretary, but he who wrote glosses on those constitutions of Otto, and those of Othobon, whom I shall in my notes on these constitutions always signify by the letters J. A.* and who appears to have written in the fourteenth century, as has been shewed in the first part of the *Vade Mecum*, p. 165; this John Athon well observes that royal structures are not properly called churches, till they have been dedicated, though the legate, who here gives them only the title of *basilicæ*, in the sequel calls them *ecclesiæ*.

[d] John Athon learnedly proves this by referring us to several places in the decree, and decretals.

[e] Interdict, says John Athon, is a punishment whereby divine offices are forbidden to be performed by interdicted persons, or in interdicted places. Yet he supposes, that only solemn, or high mass, not the modest celebration of the mass itself is forbidden by an interdict, but this must be understood as to interdicted places only. For the priest under interdict incurred an irregularity by celebrating in any manner, and could be absolved by the pope only.

2. We ordain and charge that the sacraments of the Church, in which as in heavenly vessels the means of salvation are contained, as also the consecrated oil and chrism, be purely and devoutly administered by the ministers of the Church

* [In this edition the name is printed in full.]

without any spice of covetousness under pretence of a custom, by which, say they, they who receive these sacraments make certain payments to certain persons. For the sake of the simple we have thought fit to ordain which and how many principal sacraments there are. They are baptism, confirmation, penance, the eucharist, extreme unction, matrimony, and orders. Concerning every one of these the sacred canons treat largely and fully. But because it is not easy to turn over the volumes of the canons, and it is intolerable for a physician not to know medicine, we ordain that upon the undertaking the cure of souls and the order of priesthood such as are to be ordained be examined chiefly upon these points. And let archdeacons at every meeting of their deaneries [f]instruct the priests principally in those matters, teaching them how to govern themselves in relation to baptism, penance, the [f]eucharist, and matrimony *.

[f] Eucharist is omitted in John Athon's copy, extreme unction both by John Athon's and Sir H. Spelman's; but the former supplies them in his notes.

3. The two Sabbath-days, viz., before the resurrection of the Lord and Pentecost, are by the holy canons appointed for the solemn celebration of baptism [g]on a mysterious account †; yet some in these parts, as we have heard, being imposed upon by a diabolical fraud, [h]suspect danger if children be baptized on these days; the thoughts or least fears of this are inconsistent with the merits of faith; and it is demonstrated to be false, because the chief pontiff does personally solemnize this ministry on the days before named; and the churches in other parts of the world observe the same: therefore we charge that the people be warned against this great error by frequent preaching, and be brought to solemnize baptism on those days, and to have their children baptized. We further ordain that [i]parish priests diligently learn the form of baptism, and frequently explain it in the vulgar tongue on the Lord's-days to their parishioners; that if a

[g]* [sacerdotes in his maxime studeant erudire; docentes eos, qualiter circa baptismum, pœnitentiam, et matrimonium debeant se habere. W.]

† [propter ministerium, W. This reading seems to mean the same as the other, "on account of the nature of the ministration which is specially connected with our Lord's resurrection and the gift of the Holy Ghost."]

case of necessity happens so that it concerns them to baptize any one, they may know how to observe it; and let enquiry be afterwards made whether it were observed.

[g] John Athon's says *propter ministerium*, but Sir H. Spelman's, more justly, *propter mysterium*. John Athon's gloss refers to *de Consecr. distinct.* 4. *proprie*, where it is said that Easter-eve is a time for baptism, because the form of the mystery is the death and resurrection of Christ adumbrated by the immersion of the baptized person, and his being lifted out of the waters; and that Pentecost is a second Easter; therefore I doubt not but John Athon read *mysterium*, though his transcribers have varied it.

[h] The grounds of this fancy I no where find. John Athon supposes the fear of death before that time was the ground of it *; but the constitution supposes the danger to proceed from being baptized these days, viz., on the eve of Easter, or Pentecost.

[i] That is, properly, according to the use of the kingdom, says John Athon, such as baptize in the stead of the rector or vicar; though in law, says he, it may signify the rectors, or vicars themselves: he means the pope's canon law †.

4. We have heard what is horrible to be heard and said, that some wretched priests who receive what arises from the altar, and from penance (as belonging to the vicarial benefice [k] let to farm) or for other filthy lucre's sake, admit none to penance, unless some money be first deposited [l], and deal with the other sacraments in the same manner. Now because they who do such things are unworthy of the kingdom of God, and an ecclesiastical benefice; we strictly charge and ordain, that after an exact enquiry made by the bishops, he who is discovered to have committed any thing of this sort be wholly removed from the benefice which he has, and be [m] perpetually suspended from the office which he has badly executed.

[k] *Vel ad firmam*, Sir H. Spelman. John Athon here says that the *Altaragium* consists of oblations in bread, money, or other little things.

[l] Some here add *in sinu*, John Athon *in signum avaritiæ* ‡.

[m] This suspension implies deprivation, says John Athon, though it had not been mentioned before.

5. We approve what has been ordained in a certain [n] council, and do ordain that in every deanery prudent and faithful

* [*Periculum.* Forsan mortis cito venturæ puero, vel infortunii alterius. J. Athon, p. 10.]

† [See the Latin of Athon, above, p. 39. note †.]

‡ [in sinu avaritiæ suæ, W.]

men be appointed confessors by the bishop, to whom parsons and lesser clergymen may make their confessions, who are ashamed and afraid to do it to the [o]deans. And we charge that general confessors be appointed in cathedral churches.

[n] By c. 10 of the Lateran council, 1216* bishops are obliged to have assistants in preaching, hearing confessions, and enjoining penances; this is the same as to its meaning with what Otto here requires, as John Athon observes.

[o] The deans still remained the proper confessors: the others were only for the more shy and timorous clergymen.

6. The sacred order is therefore to be conferred upon worthy men, and in a worthy manner, because other sacraments are conferred by him that is ordained. Therefore, since it is very perilous to ordain † idiots, illegitimates, irregulars, illiterates, foreigners, and any that want a true and certain title; therefore we enact that a diligent enquiry be made by the bishop before ordination concerning all these particulars. And lest [p]after such as have deserved it and are set aside upon examination, should clancularly creep in among them that are approved, let the number and names of the approved be written down, and let such as are written down be afterwards, at the beginning of the ordination, called over by reading the list with a [q]careful distinction. And let the list itself be preserved in the bishop's house, or the cathedral church.

[p] Here I follow Sir H. Spelman's copy‡.

[q] And here also John Athon's copy has *solita* instead of *solicita* by an evident mistake§. Here we may see the great carelessness which then prevailed in ordaining clergymen, and this shews the meaning of clergymen's being ordained by stealth in the first constitution of Edmund. Probably this was the first essay towards bishops keeping registries of their ordinations.

7. We will by no means by our authority support the farming of churches, or the general placing of farmers in them: yet we are afraid to put forth edicts of prohibition by reason of the infirmity of very many; which might make

* [Concil., tom. xxii. col. 998.]

† [Johnson *omits* minus dignos, W., and Athon, p. 153.

‡ [Wilkins agrees with Spelman, and Athon's text, as explained by his glosses, gives nearly the same sense.]

§ [solita, W. *Discretione solita.* Sc. separata vocatione nominatim facta. J. Athon, p. 18.]

us seem rather to lay snares than to find out remedies. But we are bound to obviate some evils arising from this cause which have come to our knowledge. For it very often happens that farmers, as they are called, while they desire to get more than they pay, commit sordid exactions, which are sometimes simoniacal. We forbid that dignities or [r]offices, as deaneries or archdeaconries, or the profits arising from the exercise of ecclesiastical or spiritual jurisdiction, or from [s]penance or the altar, or from any sacraments whatsoever, be henceforth in any wise [t]granted to farm.

[r] Here I follow Sir H. Spelman's copy, as evidently more genuine and clear*.

[s] Yet, says John Athon, the incumbent may constitute another priest to be his proxy, and when he is so constituted, may assign these profits to him instead of a salary.

[t] The foregoing particulars, says John Athon, may not be let to farm by name, or by themselves; but they may well pass in general terms, as "I let to farm my church or prebend, with all and singular the profits," &c.

8. Whereas it is very unbecoming to farm churches to laymen, and to clergymen, whatever they are, for a long time, as being dangerous, and bringing damage to the church, now we strictly forbid both, and charge that churches be not at all farmed to laymen for the future, nor to ecclesiastical persons for above five years, nor farmed again after the end of that term by the same men, without others coming between. And that all be safe, we charge that the agreement be made in the presence of the bishop or archdeacon, and several instruments thereupon written, one whereof to remain with them.

9. We have heard it somewhere happened, that in the vacancy of a fat church, which a certain man desired to have but durst not accept as parson, lest he should in law be deprived of other benefices which he had, he cunningly procured that church to be granted to him in perpetual farm, on condition that he should make a small payment to another, who was made parson in name only, and retain all the rest to himself. Upon which occasion we ordain by this edict that no church, prebend, or ecclesiastical revenue be granted

* [So Wilkins.]

to any one in whole or in part to perpetual farm, under any pretence whatsoever; decreeing any attempt of this sort to be null and void.

10. We ordain that no man for the future be admitted to a vicarage, but such an one as is already ordained priest, or at least such a deacon as may be duly ordained [priest] the [u]next ember-week, who renouncing other benefices, with cure of souls, if he have any, may swear to keep corporeal residence thereon and may always keep it: otherwise we decree the vicarage to be void, and to be given to another. And thus let that fraud be evaded, by which a small portion was assigned to one under the name of a parsonage, and the church given under the pretended name of a [x]vicarage to another man, who was afraid of losing other benefices, if he had accepted it as parson. As to vicars already instituted, who are not priests, (since vicars are bound personally to serve their churches,) we charge that within the year they cause themselves to be ordained priests. And if they themselves are the occasion of their not being ordained, we decree that from thenceforth they be deprived of their vicarages: and as to their residence we make the same ordinance as we did above in relation to them that are hereafter to be instituted.

[u] Any clerk might be instituted to a rectory, says John Athon, and I may add, that any clerk might be instituted to a vicarage before this constitution was made.

[x] From this it is evident that vicarages before this were esteemed compatible benefices, but rectories were not: this I suppose was grounded upon c. 13 of the Lateran council, 1179*, and the twenty-ninth chapter of the other Lateran council, 1216†, in both which a plurality of churches is forbidden, but not of vicarages; and a church in such cases always denotes a parsonage. And it is evident from this constitution that the clergy of England were apprehensive of the provisions against pluralities made in the late Lateran councils; otherwise there had been no occasion of fearing to take a benefice under the name of parsonage to avoid the penalty of losing the benefice or benefices already obtained: yet it is certain in fact, that many pluralities were still holden, and without any papal dispensation.

11. Every lover of justice should labour with a sagacious zeal to escape the frauds of ill men, lest if rectors grow

* [Concil., tom. xxii. col. 225.] † [Ibid., col. 1015.]

sleepy, simplicity and truth be supplanted by craft and falsity. We are informed by many that some priests, coveting a benefice which belongs to an absent man, contrive reports of his being dead, or of his having resigned his benefice, and by one means or other thrust themselves into it: and if the dead man revive and return to his church, the answer is given him, I know you not, and the gate is shut against him. Some are not afraid to invade the benefice of one that resides on the spot by clancularly breaking in upon him: and [judicial] sentences cannot turn them out of doors, they defending themselves by arms: therefore using such remedies as we can in both cases, we ordain and forbid a benefice that belongs to one to be at all conferred on another, upon pretence of an apprehension or report of the death, or cession of an absent man: but let the prelate stay till he be fully informed in either case; or else we decree that he be bound to make good all the damage done to the absent man by this means; and that he who was thrust in be forthwith [y]*ipso facto* suspended from office and benefice, beside the restitution of damages. And our will is, that this be extended to him who seizes an ecclesiastical benefice by his own authority, or rashness, by force, or clancularly, while another is in possession of it, and endeavours by arms to defend himself in it after it has been declared to belong to another.

[y] This is the first *ipso facto* sentence which I observe in our English constitutions, and in this case all law and common sense will determine that it is just and reasonable: for fraud or force can give no right.

12. Whereas the conduct of souls, as Bishop Gregory* testifies, is the art of arts, the old sophister is not wanting to use all the windings and turnings of deceit, 'and to study the fallacies of pretence in order to [z]catch the learners of this art, and to exclude those† from salvation who are unskilful and incautious, that is, he makes them transgress the commandments of God, and go contrary to the rules of holy

* [Ars est artium regimen animarum. S. Greg. M. Reg. Pastoral., p. i. c. 1. Op., tom. ii. col. 3.]

'† [et in falsæ positionis studere fallaciis, quo valeat discipulis hujusmodi artis concludere et eos excludere, Athon and Wilkins. The latter gives in a note 'prætentionis' as the reading of Matthew Paris; Spelman reads 'disciplinis.']

men, and neither the word of God nor canonical sanctions can reduce sinners from the crooked road. For our catholic art requires that there be but one priest in one church, that is a master perfect in order, habit, holy life, knowledge and doctrine, and that the [a]ordination of churches be pure and simple, but the opposition of the devil causes many to deviate in this point, whilst sometimes at his suggestion, under pretence of several patrons, a church is given not to one but divers, so that there is a monster, several heads in one body. And sometimes the parson, whatever the occasion is, consents that some portion be granted to another in the name of a parsonage. Farther, a church often remains desolate without a master, while there is neither parson nor perpetual vicar in it; but perhaps some simple priest, who has no right, nor pretence of right to it. And perhaps, if a parson do reside there, yet he is not perfect in [b]order, as not being a priest, nor in habit, as appearing to be a soldier rather than a clerk. He has alas too little care of life, knowledge, or doctrine. The ordination of the church is seldom performed in a simple manner as it ought to be without some diabolical contrivance*. For sometimes, we hear, a church is given to a man on this tacit, or express condition, that the institutor, or presenter, or some other may receive some portion out of it, and he would perhaps have the whole, if on account of the severity of the law, or the fear of losing other benefices, he had not [c]divided it. Sometimes a man makes a cession of his parsonage, and accepts a vicarage from one institution in the same church, which is presumed not to be done without simony†. Now we reprobating these divisions, and particular assignments, as contrary to our catholic art, strictly forbid them to be practised for the future; ordaining that no one church be for the future divided into several parsonages, or vicarages; and that such as have hitherto been divided be made whole again as soon as opportunity offers itself, unless they were thus ordered of old. In which case the bishop of the place must take care that a proper division be made of the [d]income, and of the quar-

* [Ordinatio quoque ecclesiæ raro fit simplici occulo, ut deberet, nec enim commenta fraudis diabolicæ desunt ibi. W. *Tormenta.* alias commenta, id est, deceptiones sophisticæ. Athon, p. 35.]

† [sine fraude. W. A.]

ters of the parish *. As also that one be constantly resident upon the church, and faithfully and honestly perform divine service, and administer the sacraments, and be solicitous for the cure of souls.

[z] John Athon's Latin is *concludere discipulos*, not *disciplinam*, as Sir H. Spelman, yet with him I read *prætentionis*, not *positionis*, as John Athon in the foregoing words.

[a] That is, the vacating and filling of the church. See below in this same constitution.

[b] Here I follow Sir H. Spelman. At this day, says John Athon, any clerk may be promoted to a rectory : yet the decree of Pope Boniface the Eighth says he must be subdeacon, but may remain rector in that order seven years. See *Sext. Decret.*, lib. i. t. 6, c. 34. Yet even by this he might be rector a year before he was subdeacon. This was A.D. 1299.

[c] *Divisisset*, J. Athon ; *dimisisset*, Sir H. Spelman †.

[d] Here both copies are very dark.

13. [e]As to the residence of rectors on their churches, we think there is greater need of executing than of enacting. For the [f]councils of the Roman pontiffs are extant, which are clearer than the light in speaking[g] on the subject. And an execution of what has been already done is more requisite than a publication of [new] sanctions. We say the same of those who hold several dignities, parsonages, or benefices with cure of souls, without a special dispensation from the apostolical see, contrary to the [h]constitution of the general council, to the expense of their own salvation.

[e] J. Athon makes this a part of the former constitution.

[f] See *Decretal.*, lib. iii. tit. 4. *per tot.* These were collected by Gregory the Ninth, who sent this legate.

[g] Yet John Athon declares that any immediate ordinary inferior to the bishop could dispense with non-residence : but it was only in a reasonable cause, in which case, I conceive, no formal dispensation was necessary : which our glossator in effect allows. The bishop only could dispense with young rectors for their seven years' absence for study.

[h] C. 13. of Lateran council, 1179‡, c. 29. of Lateran council 1216§. These canons our judges since the Reformation have declared to be as binding as an act of parliament¶. Yet the bishops and clergy of this age had no

* [ubi est per episcopum loci providendum ut tam reditus, quam ecclesia congruis inter eos portionibus et regionibus dividantur. W. Athon has, congruis ad majorem commoditatem inter se.]

† [divississet, W.]

‡ [Concil., tom. xxii. col. 225.]

§ [Ibid., col. 1015.]

¶ [See Gibson's Codex, tit. xxvii. c. 1. note z. (p. 906. ed. 1761,) and Latch's Cases, 248, Hardres, 101, there referred to.]

such thoughts of them. Otto had drawn a constitution, which he intended to have passed in this synod in order to enforce the two Lateran decrees against pluralities; but when that constitution was publicly read in council, Walter de Cantelupe, bishop of Worcester, laid off his mitre, and thus spake to the legate, "Holy father, since many noblemen that have such blood as mine running in their veins hold pluralities without dispensation; some of which are old, and have lived magnificently, it would be too hard to reduce them to a disgraceful poverty by deprivation. Some of them are young and bold, and would run the last risk rather than be confined to one benefice. I know this by myself, for before I was advanced to this dignity, I resolved with myself, that if by virtue of such a constitution I must lose one benefice, I would lose all: it is to be feared there are many of this mind, therefore we beseech your paternity to consult our lord the pope in this point*." It is probable this speech was the occasion of dropping that constitution, and leaving these few lines in the stead of it.

14. Because laymen take great scandal at the unclerical habit of clergymen, which makes them look like soldiers, therefore we charge and ordain, that they be compelled by the bishops to that form of apparel for themselves, and of trappings for their horses, that was enjoined in the general [i]council, so that they have garments of a decent length, and that they in holy orders use close copes, especially in the church, and before their prelates, and in assemblies of clergymen, and such as have rectories with cure of souls every where in their parishes. And that bishops may the better confine others to honesty of apparel, and to decent tonsures, and crowns, and trappings for their horses, let them take care that this be in the first place observed by the clergymen of their own families, by causing them to wear garments, [k]spurs, bridles, and saddles that become clergymen†.

[i] 16 c. of Later. council, 1216‡, which enjoins the close cope, as has been shewed in notes on Langton's Const. an. 1222, can. 30; and it likewise forbids gilt spurs, gilt bridles, gilt saddles, gilt pectorals.

[k] J. Athon read *talaribus*, not *calcaribus*.

15. We are informed by many credible men, that many being careless of their salvation, are not afraid, after they have contracted matrimony, clandestinely to retain their

* [Matth. Paris, A.D. 1237, quoted; Spelman, vol. ii. p. 221; Wilkins, vol. i. p. 649.]

† [provideant ut a suis clericis commensalibus hoc prius faciant observari, habentes eos in vestibus talaribus, frænis, et sellis, clericalis gerentes habitum honestatis. A. W.]

‡ [Concil., tom. xxii. col. 1006, quoted above, p. 113, note h.]

wives and churches too, and get new benefices, and be promoted to sacred orders, against the statutes of the holy canons; nor afterwards, when it seems expedient for the [l]children that have been the issue of the marriage*, while the parties are living, or after their death, to prove that marriage was contracted by witnesses, or instruments. But because perdition of souls, neglect of their salvation, lessening the goods of the Church, use to be the consequence of clergymen's living with women in matrimony, or otherwise; and that the salvation of souls, and the good of churches may be consulted, we think fit thus to obviate this reigning evil, that if it be discovered, that any have in this manner married, let them be wholly removed from their churches and benefices, and we decree that they, and all other married men be accordingly *ipso jure* deprived. And if after such matrimony they have gotten any goods by what means soever, let them not be applied to the use of their children, or wives of this sort, either by themselves or by persons privately employed about their goods, but to the churches which they had, or in which they were beneficed. And let their sons by no means be admitted to any churches or benefices, as being [m]utterly incapable, unless the Roman pontiff dispense with them in a canonical manner, their merits so requiring.

[l] *Proli*, so John Athon read, (as well as Sir H. Spelman,) as appears by his gloss, though it be *prole* in the text.

[m] John Athon makes it a moot point whether such children are bastards; he does not mean children begotten in wedlock by those who were merely in inferior orders, but children begotten by such as were in holy orders†, that is subdeacons at least, or however beneficed men: but it was scarce worth disputing, whether they were bastards in theory, since it is evident they were treated as such by the governors of the Church.

16. Though ecclesiastical reformers have always been studying to expel out of the Church the offensive stench of [n]filthy lust, by which the gracefulness of the Church is much lessened; and which is so very bad as to press for-

* [cum prole suscepta de tali copula expedire videtur, W. Athon has videatur, but the rest as Wilkins.

*Expedire.* Scilicet proli susceptæ. Athon, glo., p. 38.]

† [This seems to be a mistake; J. Athon only raises a question respecting the children of clerks in inferior orders. See his gloss upon the 15th constitution of Otho, p. 38, *ad verb. Contracta fuisse.*]

ward without shame; we therefore being unwilling to connive at that which is the reproach of the Church, following the statutes of the Roman pontiffs, and especially the [o]decretal of Pope Alexander published on this head, do ordain and charge that where clerks, especially those in holy orders, do keep concubines [p]publicly in their houses, or elsewhere, they do [q]wholly discard them within a month; so as never to keep them, or any others for the future. We ordain that if they go against this [constitution] they be suspended from office and benefice, so as not to meddle with ecclesiastical matters till they have made due satisfaction in this respect: otherwise we declare them *ipso jure* deprived. And our will is also, that archbishops and bishops cause diligent enquiry to be made on this head in all deaneries, and what we ordain to be observed.

[n] John Athon gives two reasons why incontinency is more commonly punished by the Church than other mortal sins, viz. 1. Because of its infamy: other sins, says he, are greater, but this more scandalous. 2. Other sins admit of palliation, this does not.

[o] Distinct. 81. c. 16. It is a decretal of Alexander the Second, 1065.

[p] That is, says John Athon, as a man keeps a wife: he adds, that it is no transgression against this constitution for a clerk to keep such a woman privately in his own house or another's. But what if he be discovered to lie with her? He answers, this does not prove it to be public, it is yet said to be in private, unless there be other proof*.

[q] If the clerk keep a whore in public, so as never to have her a whole month at once, but for a whole year at times, does he avoid the penalty of this constitution? John Athon declares in the affirmative, that he does, and applies the old proverb, *Si non caste tamen caute* †. This is a great demonstration of the looseness of that age, and especially of the canonists.

17. Although the holy fathers did so abhor the taking benefices by inheritance that they forbad the succession of legitimate sons in their fathers' churches; yet some born by nefarious embraces, trampling on the authority of right and honesty, invade benefices which their fathers held, [r]without any mediate successor. Now we who came into these parts to recover the [s]fall of ecclesiastical honour, taking this into

* [Johnson here makes a confusion between two distinct glosses. See Athon, p. 43, *Detinent publice concubinas*, and *Publice.*]

† [Johnson here gives an imperfect summary of J. Athon's gloss, p. 44, *Prorsus.*]

our consideration, do ordain and firmly forbid the prelates of the Church for the future to institute or admit any such men into benefices which their fathers held by any title whatsoever, by any colour or artifice, if there have been no mediate successor. And we decree that they who have already gotten such benefices shall be deprived by this statute.

[r] Sir H. Spelman reads *nullo modo*, and so it is at one place in John Athon's gloss; but in the text it stands right, viz., *nullo medio* *.

[s] *Ad relevandum honestatis ecclesiasticæ casum* Sir H. Spelman, not *statum*, as John Athon †.

18. We have thought fit that it be ordained against the outrages of robbers, with which England too much abounds, (which would not be, as we are informed, if great men did not maintain and defend them,) that no one do protect or keep them in their houses or [t]vills‡, whom they know to practise robbery, or of whom it is manifest that they do it. And we put them under the yoke of [u] ecclesiastical excommunication who transgress in this point, if upon a third admonition from the ordinary of the place they do not discard them. And we will and ordain that a general admonition suffice without expressing any man's name; so that it be done in such a public solemn manner, that it may come to their knowledge.

[t] So Sir H. Spelman. John Athon has in *locis fidelium*, and in his gloss seems to think it lawful to maintain robbers in places inhabited by Jews or heretics; but I cannot conceive what occasion the legate could have to use an expression of this sort here in England: for there was no part of England then inhabited by heretics, or reputed heretics; and though we had Jews, yet we had no towns or villages appropriated to them.

[u] I follow Sir H. Spelman §. John Athon observes that the greater excommunication must here be meant, because it is for a crime. And adds, there is a lesser excommunication, which is from the communion of

* [Nullo medio, A. W.
*Nullo medio.* Alius enim veniens mediator disjungit et interrumpit successionem. Athon, gloss, p. 47.]

† [statum, W.]

‡ [vel in villis, W. Doubtless 'vel in locis fidelium' is a genuine variation, strangely mistaken indeed by John de Athon and Johnson, but simply equivalent to the other reading, and should be translated 'or in the places of their dependants.' Fidelis meant one who was under a bond or oath of fealty (fidelitas) to a lord. See Somner, gloss, ad X. Script. art. Fidelis; Thorpe, Oaths, c. 1; compare Johnson, vol. i. p. 509. A.D. 1017. c. 20.]

§ [So Wilkins.]

the faithful, the greater which is from the participation of the sacraments. Yet Gregory the present pope in a decretal bearing date the same year with this council, declares that the greater excommunication is repelling men from the communion of the faithful, and the lesser from the participation of the sacraments. The distinction was new, and the glossator followed his own judgment rather than his books in this case. See *Decretal.*, lib. v. tit. 39. c. 59.

Though the distinction of greater and lesser excommunication be found before this in the sum or abridgement of some decretals, yet not in the text, however not before the year 1216.

19. We hear and rejoice that the religious abbots of the order of St. Benedict in England meeting together in their general chapter (as "sons returning to their bounds" according to the prophet) have providently ordained, that for the future according to the rule of St. Benedict, they ought to abstain from eating flesh, excepting the weak and infirm, who ought to have provision made for them in the infirmatory according to the said rule: which we approve and ordain to be inviolably observed. And we add, that novices at the end of the year of probation, in which they wore the monastic habit, be compelled by canonical censure from the abbot or prior forthwith to make profession. And let none be admitted abbot or prior who has not made profession*. And we think fit that what has been said of making profession at the end of the year of probation, be extended to canons regular and nuns. As to other points which concern the correction and reformation of these and other regulars, we intend to make provision; and the Lord permitting we will ordain and command what we think useful to their churches, and wholesome for themselves, [x]to be strictly observed by their chapter.

[x] Sir H. Spelman's copy says, And we will command the statutes to be solemnly published by their chapters. This seems to be a better lection than that of John Athon's which I have put in the text: yet John Athon, who mentions this lection in his gloss, asserts the other to be genuine†.

20. As to archdeacons, we ordain that they do prudently and faithfully visit the churches, enquiring into the sacred

* [Johnson *omits*, juxta decretalem felicis memoriæ Honorii papæ, A.W.]

† [observari, W.]

furnitures and vestments, and how the diurnal and nocturnal services are performed in the church, and in general both into temporals and spirituals; and that they diligently use correction where there is occasion. But let them not aggrieve the churches with superfluous expenses. 'And let them demand moderate procurations [y]only when they visit, and not bring strangers with them, and be modest both as to their [z]retinue and horses[a]. Let them take nothing from any man for not visiting, not correcting, or punishing*, nor pass sentence on any unjustly in order to extort money from him. For since these and such like doings savour of simony, we decree that they who practise them be compelled to expend the doubles of what they have extorted in pious uses at the discretion of the bishop; beside other [b]canonical punishment. And let them be very careful to be often present in the chapters of every deanery; and there diligently instruct priests among other things to live well, and to know and soundly understand the words of the canon [of the mass,] and of baptism, as being of the essence of the sacrament.

[y] *Duntaxat* stands in the Latin, as 'only' does in this translation, so as to be applied either to 'moderate' foregoing, or 'when they visit' following.

[z] Lat. *familia*.

[a] John Athon's copy has *cum visitent, corrigant, &c., aliquid ab aliquo, &c.* But this does not seem to me to agree so well with what follows.

[b] That is suspended *ab ingressu ecclesiæ*, till they pay the doubles†; for I find no other punishment for the fault. Sext. *Decret.*, lib. iii. tit. 20, c. 2.

21. We have thought fit strictly to forbid the prelates of churches, and especially archdeacons, deans, or their officials, and all others that are delegated to all causes, or any affairs that come into the ecclesiastical court by reason of its ecclesiastical jurisdiction, that they do not hinder peace and concord between parties in their discords and quarrels, but permit the parties to withdraw from their judicature whenever they please by composition; on condition that the business be

'* [Sed procurationes exigant duntaxat, cum visitant, nioderatas; non secum ducant extraneos sed modeste se habeant tam in familia quam in equis. Cum autem visitent, aut corrigant, seu crimina puniant, aliquid ab aliquo recipere non præsumant, W.]

† [If the offender were patriarch, archbishop, or bishop, "Inferiores vero ab officio et beneficio noverint se suspensos."—Sexti Decretal., lib. iii. tit. 20. c. 2.]

such as that a [c]composition or transaction is allowed by law; nor let any thing be demanded on this account.

[c] See *Decretal.*, lib. i. c. 36. *de transactione;* and yet it will be difficult to determine in what cases it is permitted.

22. The name bishop (that is, superintendent) clearly expresses what is required of the venerable fathers the archbishops and bishops to be done in virtue of their office. It concerns them to observe and watch over their flock by night according to the evangelical phrase. And since they ought to be a pattern by which their subjects are to reform themselves, which cannot be done except they shew an example, we exhort and admonish them in the Lord, that they reside upon their cathedral churches, and [d]decently celebrate mass there on the principal festivals *, and the Lord's days[e] in Lent † and Advent. Farther, that they go about their dioceses at seasonable times, correcting and reforming and consecrating churches, and sowing the word of life in the Lord's field. For the better performance of all this let them twice a year (that is in Advent, and the [f]greater Lent) cause the profession which they made at their consecration to be read to them.

[d] *Congruentes missas*, John Athon; that is, I suppose, proper masses ‡.

[e] Here John Athon's copy adds, *et*, but I conceive it is better left out, as in Sir H. Spelman's.

[f] The canon law mentions three Lents, causa 22. quæst. 5. c. 1, 2. We have mention of long fasts before Midsummer, Michaelmas, and the Assumption of the Virgin. John Athon says Advent was a Lent §.

23. Since not only power but discretion and knowledge are principally required in determining matters, all are to take heed that such a judge or hearer of causes be not deputed, as may pass an imprudent or unjust sentence through simplicity, unskilfulness, or want of experience, so as that the guilty be acquitted, the innocent condemned. Therefore we have thought fit to ordain that matrimonial causes,

* [ut moram facientes apud cathedrales ecclesias, congruenter ibidem missas celebrent in præcipuis saltem solennitatibus, W.]

† [et in quadragesima, W.]

‡ [*Congruentes.* Arbitrio ejus relinquitur, præterquam in diebus subsequentibus exceptis. Athon. gloss, p. 56.]

§ [See in former volume, A.D. 740. 162, and A.D. 963. 43, 46.]

which are to be handled with peculiar deliberation and diligence, be committed to provident and trusty men, and such as are skilful in the law, or have at least been well exercised in causes. But if any deans, archdeacons, or abbots have by privilege or allowed custom, the cognizance of matrimonial causes, let them take care to make diligent [g]examination*: so that neither they nor their delegates proceed to a definitive sentence, before they have diligently consulted with the bishop of the diocese concerning the merits of the cause, and asked and received his advice. And we will, that exempts, [h] or such as are specially privileged, be obliged to this.

[g] *Ordinare*, John Athon, but I follow Sir H. Spelman and the other copy mentioned in John Athon's margin.

[h] John Athon's present text says, 'except they are specially privileged,' but his gloss agrees with Sir H. Spelman and my translation. The monks of some such privileged monastery did probably make this alteration.

24. We ordain that the [i]oath of calumny in all ecclesiastical causes [k]whatsoever, and of speaking the truth in spiritual causes†, be for the future taken in the kingdom of England, according to the canonical and legal sanctions, a prevailing custom to the contrary notwithstanding; that so the truth may more easily be discovered, and causes sooner determined. We add to this statute, that probatory [l]terms‡ may be granted at the discretion of the judges according to canonical and legal sanctions.

[i] Of this see *Decretal.*, lib. ii. tit. 7. It will there appear that this oath is not universally required. This oath was first introduced by the civil law: it is to be taken both by plaintiff and defendant, and contains that the party believes his cause to be just, that he will use no false proof nor cause any unnecessary delay, nor give any bribes.

[k] *Cujuslibet*, Sir H. Spelman, but I read *quibuslibet;* John Athon *civilibus.*

[l] Of these see caus. iii. quæst. 2, 3, *per tot.* and *Decretal.*, lib. ii. tit. 8. This granting of time for bringing evidence and other pretences is the chief occasion of those delays which are the reproach of the present eccle-

* [diligenter eas ordinare procurent, A. W., diligenter ipsas examinare procurent, MS. quoted in Athon's margin. S.]

† [Jusjurandum calumniæ in causis ecclesiasticis et civilibus de veritate dicenda in spiritualibus, W. The MS. quoted in Athon's margin reads 'et' after 'civilibus.']

‡ [judiciales induciæ, A. S. W.]

siastical courts, though the oath of calumny was introduced to prevent them.

25. The craft of the old enemy frequently turns the use of proctors, which was introduced as an attendance to justice, (that they who cannot wait upon their own cause might have their absence supplied by others,) into a mischief: for a custom is said here to prevail, that he who is cited to a certain day constitutes a proctor for that day without letters, or by letters not signed with an authentic seal: 'by which means it happens, [m]that while such a proctor will not prove his mandate or confirm his letters by witnesses, or some other impediment comes in the way, nothing is done that day, nor on the following day, the proctor's office being at an end[n]: and so all former diligence is lost without any effect. As a caution against this fallacy we ordain that for the future a special proctor be constituted [o]absolutely, or if he be constituted for a day, yet not for one day only; but we will that he be constituted for several days for a continuance, if need be, and we presume him so constituted*. And let the mandate be proved by an [p]authentic writing, unless he be constituted in the acts of court; or the constitutor cannot easily find an authentic seal.

[m] Here I follow Sir H. Spelman, only reading *fallacia* for *fallaci*, and *aut* for *ut* before *si*; and adding *officio* from J. Athon after *procuratoris*, though if we read *procuratorio*, we need add nothing, but translate, 'the proxy being at an end.'

[n] Add here by conjecture, 'for want of a good proxy.' Both copies are dark in this constitution.

[o] Absolutely, that is, without any limitation of time.

[p] That is, signed by good witnesses.

26. Parties in a suit do whatever they can against each

'* [Johnson's translation here nearly agrees with the text of Wilkins which is given below, as also the more important variations of Athon's text:

Unde fit, quod dum talis procurator vel[1] probare mandatum, vel fidem literis imponere non vult per testes, aut aliud impedimentum occurrit, nihil agitur illa die; sed nec expirante officio procuratoris in sequenti, sic que 'perit illa instantia[2] sine fructu. Huic igitur fallaci[3] cautelæ clypeum opponere cupientes, statuimus, ut de cætero 'in causis ecclesiasticis regni Angliæ[4] procurator[5] constituatur simpliciter, vel, si constituatur, ad diem non unum tantum, sed ad plures continuandos, si opus fuerit, constitui volumus, et intelligi[6] constitutum. Conc. Brit., vol. i. p. 654-5.

[1] vult, A.; '[2]illa die perit justitia, A.; [3]fallaciæ, A.; '[4]so A. S.; [5]specialis, A., *add.* [6]intelligamus, A. Cf. J. Athon in Const. D. Othonis, p. 62.]

other in contempt of justice. We have heard from many that men obtaining letters of summons, send them to the place where the party to be cited dwells by three vile messengers; two of which put up the letters over the altar, or in some other place; and the third presently takes them away: afterwards those two testifying that they have summoned him, according to the manner and custom of the country; the party is excommunicated, or suspended as contumacious, who was wholly ignorant of the summons, as well as the contumacy; therefore prosecuting this detestable abuse, and others like it with a zeal for justice, we ordain, that letters of summons in ecclesiastical causes in the kingdom of England, be not sent by such as obtain them, or by their messengers; but that the judge send them by his own faithful [q]messenger at the moderate expense of him who obtained them: and let him diligently seek the party to be cited; and if he cannot find him let him cause the letters to be publicly read on some Lord's day, or other solemn day in the church of that place where he uses to dwell, while mass is in singing, and also to be explained: or at least let the summons be directed to the dean of the deanery, in which the cited party dwells, and let him at the command of the judge faithfully execute it by himself, or by his certain and trusty messengers. And let him not neglect to certify the judge of what he hath done thereupon.

[q] This seems to be the original of apparitors in England.

27. The more necessary the use of sealed instruments is in England, where there are no public notaries*, the greater ought the caution to be, lest through the unskilfulness of some they be abused. For we hear letters are drawn and sealed, not only by [r]lesser clerks, and prelates†, in which it is implied that such a man made a contract, or was present at the making of it, or at any business, or was summoned to court, or had letters of summons shewed him; who yet was not present, nor any where to be found, nay perhaps was then in another province or diocese. Now since such writings

* [ubi publici notarii non existunt, A. W.]

† [Conficiuntur enim (ut audivimus) literæ ac signantur non tantum a minoribus clericis verum etiam a prælatis, A. W.]

do plainly imply forgery, we strictly forbid the drawing of them, and do enact with a provident deliberation that they who shall be convicted of offending in this respect, and who knowingly use such letters to the damage of another be punished as [s]forgers, and as those who use forged instruments.

[r] By lesser clerks J. Athon understands officials and deans rural: yet contends that rectors of churches (if not their substituted curates, for the gloss is very dark and ill printed) are prelates, which to me seems intolerably incongruous*; not but that rectors are often styled prelates in the canon law, and are clearly said to have the power of excommunicating in notorious cases but because officials and deans rural were superior to mere rectors. Therefore by lesser clerks I understand all inferior to incumbents, and by prelates all incumbents and their superiors. These lesser clerks might in some cases sign certificates, and were probably retained in the ecclesiastical courts, as registers, seal-keepers, &c.

[s] The punishment of forgery in clergymen of all sorts was of old doing penance for life in a monastery. See 50. *Dist.* c. 7. In J. Athon's time it was *suspensio ab officio et beneficio.*

28. Because notaries public are not used in England†, and therefore there is more frequent occasion for authentic seals; that there may be no want of them, we ordain, that not only archbishops and bishops, but their officials; also abbots, priors, deans, archdeacons, and their officials, and deans rural, as also cathedral chapters, and all colleges, and convents, have a seal, either jointly with their [t]rectors, or distinct from them, according to their custom or statutes. Let every one of the aforesaid have a seal with their several distinctions; that is, the name of their dignity, office, or college, as also the proper name of the men who enjoy the dignity, or office, graven in plain letters or characters, if the office be perpetual. Let them who have taken an office which is but

* [John Athon in his gloss does not mention substituted curates but the rector having cure of souls in a parish, as distinguished from the head of a collegiate body:

*Etiam a prælatis.* Ut sunt proprie, qui alicui approbato collegio præsunt, quocunque nomine vocentur; ut plene notat Innoc. *Extra. de offi. ordi. cum ab ecclesiarum prælatis. in prin.* et facit quod notatur *supra c. Consti. contra latronum. § fi. in glo.* 1. *per suum.* Sed nunquid ergo rectori curato nomen prælati conveniat? Videtur per præmissam decisionem Innoc. quod non. Sed tu dic quod sic extensive: ut patet in textu *Extra. de cle. ægro tua nos.* in tantum, quod talis potest judicare et excommunicare ordinario jure, nedum in genere, 1. *q.* 1. *quidam. Extra. de offi. ordi. sacerdos.* sed etiam in specie; 2. *q.* 1. *nemo.* 11 *q.* 1. *experientiæ. et q.* 3. *audi. et c. quomodo.* dum tamen dicamus solos eorum subditos tunc ligari. Athon, gloss, p. 66.]

† [Quoniam tabellionum usus in regno Angliæ non habetur, A. W.]

for a time, as rural deans, and officials, forthwith, and without trouble resign their seals at the expiration of their office to him from whom they received it; which seal is to have the name of the office only graven upon it. And we charge, that they be very careful as to the custody of their seal, that every one keep it himself or commit it to the keeping of one only, of whose fidelity he is assured, and let him take an oath that he will keep it faithfully, and not lend it to any one for the sealing of any thing, nor seal any thing himself to the prejudice of another, but what his principal hath first read and viewed with attention, and so commanded him to seal. Let there be a faithful and provident caution used in setting the seal; faithful, so as that it be easily granted to those that want it: provident, so as that it be wholly denied to falsaries, or forgers. We also ordain, that the proper date of the day, time and place, be inserted at the beginning or end of every authentic writing.

[t] That is, abbots, priors, or other heads.

29. We have heard a clamour of justice complaining that advocates too often obstruct her by cavils and tricks, and judges make away with her by ignorance; and parties evade her by obstinacy. For it sometimes happens that [u]one who is sent to take possession of any thing for the sake of preserving it, endeavours to retain it, though the adversary return within the year, and be ready to satisfy the law in all respects. And sometimes he who is sent to take possession is not able to get it either within, or after the year, [or] whenever he is constituted the true possessor, by reason that his adversary opposes him with arms. Therefore standing up for the support of justice, we ordain by the approbation of this holy council, that he who would be advanced to the office of an advocate in general make oath before the diocesan, in whose jurisdiction he is by birth or habitation, that 'in the causes which he undertakes he will perform the part of a faithful patron;' not so as to pervert or delay justice to the adverse party, but by defending the cause of his client by law and reason. In matrimonial causes and elections let him not be admitted [to plead] unless he take the like oath, particularly as to those causes; nor in other causes for above

three terms without taking the like oath, unless it be in behalf of his own church, or for his [x]lord, or known friend, a poor man, a stranger, or any miserable person, for whom he thinks fit to plead. Let all advocates take heed that they do not suborn witnesses by themselves, or by others, nor instruct parties to suggest what is false, or to suppress what is true. Let them who transgress be *ipso facto* suspended from their office*, till they have made proper satisfaction; and yet have other due punishment inflicted on them. Let judges who know not the law, if any doubt arise, by which damage may happen to either party, ask the advice of some knowing man, at the expense of each party. We ordain also that they observe the constitution of the general council, both in ordinary and extraordinary judicatures, faithfully [y]keeping by them the original authentic acts; or that they cause them to be kept by their scribes, as they ought to do, and grant the perusal of them to the parties concerned. To whom all [the acts] after they are written, we charge to be publicly read, that if any mistake hath been made in writing it may be rectified; that the truth may clearly appear as to the acts. Let judges also provide that when they have decreed to send any one to take possession, by reason of the contumacy of the adverse party, they take proper caution from him that is to be sent for restoring possession, if the adversary return within the year; together with the profits, if any have been received, after lawful expenses deducted. And we decree that he be wholly deprived of his right (on supposition that he had any right in it) who keeps possession by violence, so that another be sent, on account of his contumacy, and made true possessor after the year [be ended.]

[u] By the canon law in this age, if he that was sued for a benefice of which he was in actual possession, did not appear upon the summons, the plaintiff was sent to take possession of it by way of sequestration; if the former possessor appeared within the year, sentence was given after hearing the merits of the cause; but if he did not appear within the term, he that was sent by the court was rightful possessor. But this was wholly abolished by Pope Innocent in the council of Lyons†, A.D. 1244. See *Decretal.*, lib. ii. tit. 14. *per tot.* *Sext.*, lib. ii. tit. 7.

[x] His patron probably; for beneficed clergymen were frequently advocates.

* [et beneficio, S. W. *add.* A, *om.*]

† [Conc. Lugd. I. can. ix. Concil., tom. xxiii. col. 621.]

[y] Cap. 38. of Later. council, 1216, which orders two scribes, or registers, for the acts of every court *.

Sir H. Spelman's copy divides this last constitution into three, whereas it was evidently but one at first †.

When this was done, upon the third day the lord legate solemnly began *Te Deum*, all standing up, and after the antiphon, *In viam pacis*, and the psalm *Benedictus Deus Dominus Israel*, and the blessing given, says Matthew Paris, with little joy all departed.

* [Concil., tom. xxii. col. 1026.] † [Wilkins agrees with Johnson.]

## A.D. MCCL.

### PREFACE. ARCHBISHOP GRAY'S CONSTITUTIONS.

The following constitutions of Walter Gray are styled provincial, as being clearly intended to be observed by the whole province of York, though published by the sole authority of the archbishop before named: and there are other instances besides this of archbishops making constitutions without consent of synods. I the rather place it among the provincials, because it will appear that some constitutions of the greater province of Canterbury were copied from these of Archbishop Gray.

## A.D. MCCL.

### ARCHBISHOP GRAY'S CONSTITUTIONS.

LATIN. Sir H. Spelman, vol. ii. p. 290. [Wilkins, vol. i. p. 698 *.]

THE decree of the Lord Walter Gray, formerly archbishop of York, primate of England, legate of the apostolical see, published at York, at the time of his visitation, to the honour of God, and the present information of the church of York, and to the memory of all that are to come.

1. Whereas great controversy often ariseth between the rectors or vicars of churches, within the province of York, and their parishioners, concerning divers ornaments and things belonging to the church; therefore that it may be known what the rectors or vicars are concerned to uphold and repair, and what things and ornaments of the church are to be repaired by the parishioners; we ordain, that all our parishioners be so well informed in the following particulars, as that they do all in every respect observe them, 'that is the [a] chalice, [b] the principal mass-vestment of the church, with the chesible, the alb, the amyt, the stole, the maniple, the girdle, with three towels and corporals, and other decent vestments for the deacon [and subdeacon,] †according to the condition of the parishioners, and the church, with a silk cope for the principal festivals, and two others for presiding in the choir at the feasts aforesaid, a cross for processions, and another lesser cross for the dead, a bier for the dead, a vessel for the holy water, an osculatory, a candlestick for the paschal taper, a cense-pot, a lanthorn with a little bell, a lenten veil, two candlesticks for the [c] collets, the legend, the

* [*Constitutiones provinciales Eboracenses per dominum. Walterum Gray, quondam Archiepiscopum Eboracensem.* Ex MS. Cotton. Vitellius, D. v.]

' † [viz., quod calix, missale, vestimentum ipsius ecclesiæ principale, viz. casula, alba munda, amictus, stola, manipulus, zona, cum tribus tuellis, corporalia, et alia vestimenta pro diacono honesta, S. W. The comma after 'missale' should clearly be omitted, see next page, note b.]

‡ [ceroferariis, S. W.]

antiphonar, the grail, the psalter, the troper, the ordinal, the missal, the manual, which are the books: the frontal for the high altar, three surplices, a decent pix for the body of Christ, banners for the rogation days, great bells with their ropes, the holy font with a lock and key, the chrismatory, the images in the churches, the principal image (in the chancel) of that saint to which the church is dedicated; the repair of the books and vestments, with all the things aforesaid, as occasion shall be; the beam-light in the church*, the repair of the body of the church, and building of it, with the steeple within and without, the glass windows, the fence of the churchyards, with the [d]wings of the body of the church, and every thing which is known to belong to the parishioners †.

[a] I do not explain these words here; because I think it will be done more conveniently at the fourth constitution of Archbishop Winchelsey.

[b] Both copies in Sir H. Spelman (and I have none other) are corrupted; I read thus, *calix, missale vestimentum ipsius ecclesiæ principale, casula, &c.*, without making a comma at *missale*, as if the mass-book were thereby meant, which is afterwards expressly mentioned, and therefore there was no occasion for it here, and deleting *viz.* before *casula*. For it is certain a cope, not a chesible, was the principal vestment ‡: and this constitution provides four copes to be found at the parishioners' cost, as Winchelsey's constitution does not.

[c] So our ancestors called the acolyths, or candle-bearers as they are styled.

[d] Read *alis* not *aliis*.

All other things shall belong to the rectors or vicars, according to their several [e]ordinations; that is, the principal chancel with the reparations thereof, as to the walls, and roofs, and glass windows, with desks and benches, and other decent ornaments, that they may sing with the prophet, "[g]Lord, I have loved the comeliness of Thy house," together with the manse of the rectory, and the reparation thereof from time to time. And let rectors or vicars know that they may be compelled to these and other things not written

* [luminare in ecclesia, S. W.]

† [cum aliis navis ecclesiæ, et singulis aliis, quæ ad ipsos pertinere noscuntur, S. W.]

‡ [This is a mistake, the chasuble (casula, amphibalum, planeta) was always the principal mass-vestment, but the cope was the principal vestment for processions. See Durandi Rationale, lib. iii. c. 1; also vol. i. of this work, A.D. 960. 33. p. 418-19, and Dr. Rock's Church of our Fathers, vol. ii. p. 448.]

in this book, by the ordinaries of the places, according to this and other constitutions approved in this respect.

[e] i.e. compositions, or endowments.

[Addenda.] [f] [From hence we may conclude that rectors of churches were bound to have conveniences in their chancels for the priests and clerks to sit and lay their books while they were reading or singing their hours or breviaries. I should not have thought this worth the mentioning, if a late antiquarian in folio had not pronounced all those chancels, where he found such desks and benches (stalls he is pleased to call them) to have had some body of monks, or religious, formerly belonging to them. By this argument he might probably two hundred years ago have proved every church in the county to have belonged to some monastery or college.]

[g] Psal. xxvi. 8, *sec. vulg.*

[Lynd., p. 191.] 2. Because by means of divers customs in demanding tithes in divers churches, great disputes, scandals, and malice arise between rectors and their parishioners, our will is that in all parish churches throughout our [h]archbishopric, or archdeaconry] there be an uniform demand of tithes and other ecclesiastical profits*, [i]unless the parishioners will redeem them at a competent rate. And our will is that the tithe of hay be paid wherever it grows, whether in great meadows or less, or in the [j]heads of plough-lands†, and to the advantage of the church. As to the feeding of cattle, our will is as to lambs, that for six, or fewer, so many halfpence be paid; for seven lambs, or more, the seventh lamb; but so that the rector who receives the seventh lamb for tithe, pay back three halfpence; [k] [he who receives the eighth a penny, who receives] the ninth a halfpenny; or else the rector may choose to stay till the next year, and receive the tenth: and let him that so stays always insist upon the second, or at least the third best of the lambs of the second year; and this on the account of the year's delay. This is also to be applied to the tithe of wool. If the sheep have fed in one parish in the [l]winter, in another during summer, let the

* [The following passage in Wilkins is omitted by Spelman and Johnson:

In primis volumus, quod decimæ de frugibus, non deductis expensis, integre et sine aliqua diminutione solvantur, et etiam de fructibus arborum, et seminibus omnibus, et herbis hortorum. See Johnson's note i.]

† [sive in hortis, W. Spelman *has* chevicis.

*Chiminis*, i. e. Viis vel semitis; et est vulgare Gallicorum. Lyndwood, gloss, p. 192.]

tithe be divided. If any buy or sell sheep between the winter and summer, and it be certain from what parish they came, the tithe is to be divided, [m]as in case a thing belong to two several houses*: but if this be not certain, let that church within whose bounds they are shorn have the whole tithe. As to milk, our will is that the tithe of it be paid, while it lasts; of cheese in its season, of the milk itself in autumn and winter, unless the parishioners will redeem it; 'and that to the advantage of the church, our will is, that tithe be paid in full of the [n] profit of mills†. We ordain that tithes be paid 'of [o]pastures of all sorts‡, whether common or not common, according to the number of the cattle, and the days, and for the advantage of the church§. We ordain, that tithes be demanded and paid in a due manner of fishings, and bees, as of all other things yearly renewing, which are gotten by lawful means. We ordain that [p][personal]¶ tithes be paid of handicrafts and merchants, and of the gains of negociation; as also of [q]carpenters‖, smiths, and weavers, [r]masons** and victuallers; that is, let tithes be paid of their wages, unless they are willing (with the rector's consent) to make some certain payment for the benefit, or the lights of the church. In demanding the [s]principal legacy, let the custom of the province with the [t]possession of the church be observed; but so that the rector, vicar, or annual chaplain have the fear of God before his eyes in making the demand. But because we hear there are some who refuse to pay tithes, we ordain that parishioners be admonished once, twice, and thrice to pay tithes to God and the Church; and if they persist in their refusal, let them be [u]suspended from entrance into the church, and so be compelled, if need be, by Church censure to the payment thereof. But when they crave a relaxation, and absolution of the said suspension, let them be sent to the ordinaries of the place to be absolved, and punished in due manner. The rectors, vicars, and

* [Sicut de re quæ sequitur duo domicilia, Lyndwood. Wilkins omits 'duo' perhaps inadvertently.]

'† [et hoc ad valorem decimæ et commodum ecclesiæ. De proventibus autem molendinorum, volumus, quod decimæ exigantur et solvantur, ad valorem proventuum, et hoc nisi domini pro valore proventuum faciant redemptionem. W.]

'‡ [De pasturis autem et pascuis, Lynd., W.]

§ [si expedit ecclesiæ, W.]

¶ [personales, W.]

‖ [Carpentariis, W.]

** [Not in Wilkins.]

annual chaplains of churches who do not demand the tithes effectually in manner aforesaid, either for fear or favour of men, or for want of the fear of God, shall be involved in the penalty of suspension, till they pay half a mark to the archdeacon for their disobedience.

[h] Our province, Archbishop Winchelsey. Lyndwood here says, that in some books this is attributed to Archbishop Boniface, in one to an ancient synod at Merton. Boniface held a synod there, Spelman, vol. ii. p. 304*.

[i] Archbishop Winchelsey's statute here adds, "first our will is, that tithe of fruits be paid in full, without any deductions, or diminution on account of expenses, and of the fruit of trees, and all seeds, and garden herbs†."

[j] Walter Gray's constitution is *chevisis* in the fore-acres, or heads of plough-land, but Archbishop Winchelsey's *cheminis* in the high ways.

[k] The words in hooks are not in the constitution of Walter Gray‡, but therefore the sense is imperfect, and must be supplied from Archbishop Winchelsey's constitution.

[l] Winter, says Lyndwood, is from St. Clement's, Nov. 23, till St. Peter's, Feb. 22§. Spring till St. Urban's, May 25. Autumn begins, August 24. St. Bartholomew; but here, says he, winter and summer include the whole year; reckoning from one equinox to the other, or from Michaelmas till Lady-day, or from All Saints to SS. Philip and Jacob, according to several customs.

[m] This is a civil law phrase. William Gray's copy says, *sicut de re quæ acquiritur ex militia.*

[n] Here W. Gray's copy is not intelligible. Lyndwood inclines that tithe was due of the whole profit, or toll of the miller, without any deduction.

[o] W. Gray's copy here has *piscariis* for *pascuis.*

[p] This word is not in Walter Gray.

[q] Walter Gray has *arentaria* for *carpentariis:* it is probably an error of the scribe, or press; if not, we must suppose that he meant tithe of rent.

[r] These are mentioned in Archbishop Winchelsey's constitution only.

* [Wilkins, vol. i. p. 736, gives the acts of the 'Concilium Mertonense,' A.D. 1258, but without mention of the above constitution among them. The following is Wilkins's note upon the above constitution as commonly ascribed to Archbishop Gray.

Constitutio hæc Bonifacio archiepiscopo Cantuar. adscribitur in MS. Regio ix. B. 2. sub hoc titulo: "Statutum generale London. celebratum per venerabilem virum dominum Bonifacium, archiepiscopum Cantuar." Ex quo MS. sequentia exhibemus. Conc. Brit., vol. i. p. 698.]

† [So Wilkins in this constitution as ascribed to Abp. Gray.]

‡ [As given by Spelman, vol. ii. p. 291, but Johnson's emendation is confirmed by the text of Wilkins, vol. i. p. 698.]

§ [usque 8 calend. Martii sc. Festum Cathedræ Sancti Petri., Lynd. glo., p. 194, *Hyeme.*]

[s] That is, a mortuary, which first was voluntary, and bequeathed by will, and then gradually grew into a custom.

[t] That is, the present manner of paying it.

[u] The curate, says Lyndwood on the constitution of Winchelsey, p. 196, may excommunicate in general, and forbid the guilty person entrance into the church, upon condition that such curate be in priest's orders.

## A.D. MCCLXI.

### ARCHBISHOP BONIFACE'S CONSTITUTIONS.

The Constitutions of Boniface, lord archbishop of Canterbury, (uncle by the mother to Eleanor, queen consort to King Henry the Third, now reigning, brother to Peter, now earl of Savoy,) published at Lambeth.

LATIN. [Lynd., p. 314. Sir H. Spelman, vol. ii. p. 305. Wilkins, vol. i. p. 746*.]

To all the sons of holy mother Church throughout the province of Canterbury, Boniface by divine miseration archbishop of Canterbury, primate of all England, and his suffragans; for the information of them that now are, and the remembrance of them that are to be.

The sanction of the divine will, which has distinguished the order of all things, and the composition of all nature in weight, number and measure, intended that earthly government should follow the pattern of the heavenly; by restraining mankind (whom it designed to a dignity beyond the rest of the creation) from sensual lust by laws of nature, and from the frailty of their wills by legal institutes; that they who are mighty should not think they were allowed an arbitrary power over those below themselves; nor those below (whom an unalterable series of causes has distinguished from those above them, to whom they are by nature equal) despise the discipline of their superiors. But as this habitable world is subject to the heavenly government, so as to have night and day by a continual succession according to the disposition of the heavenly lights: so the spiritual, and terrestrial, the sacerdotal and regal order of governors should so manage the reins of dominion put into their hands, that

* [*Concilium Lambethense, in quo constitutiones provinciales per Bonifacium, Cantuar. archiepiscopum, editæ sunt tertio idus Maii*, A.D. MCCLXI. *et regni regis Henrici tertii* xlv. Ex MSS. Cott. Otho A. xv. et Vitell. A ii. Collat. cum MS. Lambeth. n. 17. et MS. Elien. n. 235.]

the force of one should not obstruct the proceedings of the other; but that each should assist the other with a mutual charity; as partaking of that light they have for the dispelling of darkness from men.

The former fathers and our predecessors the archbishops of Canterbury, primates of all England, and their suffragans, and especially Edmund, the friend of God, our late predecessor, whose memory is blessed and whose lot is among the saints, and we also, who immediately have succeeded him in the government without deserving it, with our brethren and fellow bishops the suffragans of the church of Canterbury in our times, considering with great concern that the grievances and oppressions which lie hard upon the liberties of the Church of England do not at all turn to the advantage of the king our lord, but rather to the great hazard of the salvation of his soul and ours, and to the lessening of his honour and of that of the whole kingdom, we have often, with great importunity and reverence, admonished and petitioned him, and caused him to be petitioned; and have in season and out of season prayed and required the princes, great men of the kingdom, and counsellors who manage the affairs of the kingdom, that they would remember with how many plagues the Egyptians were smitten because they forced the people of God, the children of Israel, (who were a type of the ministers of the altar,) to serve in brick and clay, subjecting them to undue slavery, contrary to the precept of the Lord and the privilege of natural right, by which a man is bound not to do that to another which he would not suffer himself; that they would prudently consider that Christ so loved His Church (for whose sins fathers are now by force taken from their children, and the sheep worry their shepherds) that He with His own Blood blotted out the handwriting of servitude occasioned by Adam's transgression, 'and has dyed her red with the blood of martyrs fighting with the arms of faith against the princes of the world and secular powers; that they would pay an humble deference to so pious a privilege, that was purchased so dearly (the charter of liberty granted from heaven to the Church, and afterwards renewed upon earth by the faithful princes of the world) by permitting the English clergy with

a concern for their liberty to offer the sacrifice of praise to God*, lest their persecutors should be drowned in the floods of divine anger; if they force them to be slaves in contempt of the divine command. But although we have patiently laboured with our repeated petitions, yet our continued importunity has never been heard, or produced its expected effect. And because what is usurped against the Prince of Heaven cannot be neglected without danger, we have provided certain remedies in opposition to the grievances aforesaid (as when we neither ought nor can connive any longer without offending God) by having recourse with confidence to the armour of righteousness, which is the word of God, more piercing than a two-edged sword: and this we have done by the approbation of the council by providently ordaining, in opposition to the attempts of the perverse, in manner and form following.

1. 'aObserving that the scythe of earthly dominion is more licentiously (charity growing cold) put into the harvest of our Lord than the heavenly law allows, which commands us to render to Cæsar the things that are Cæsar's, and to God the things that are God's, (Christ not sending kings and secular princes into His harvest, but the Apostles and their successors, who were by faith conquerors of kingdoms and kings;) we are smitten with grief of heart and bitter horror, fearing lest we incur the peril of [divine] indignation while we neglect to encounter evil men†. Since, therefore, the Church of England, a parcel‡ of the divine harvest, is several ways grinded by direful concussions, sacrilegious insults, new usurpations, nefarious oppressions, not only against di-

'* [et sanguine martyrum, armis fidei dimicantium, adversus mundi principes et seculi potestates rubricavit, privilegium libertatis e cælo prius concessum ecclesiæ, et in terris postmodum a principibus hujus mundi fidelibus innovatum. Huic inquam, privilegio tam pio tamque nobili pretio comparato, deferrent humiliter ob reverentiam Redemptoris, permittendo clerum Angliæ in solitudine libertatis, laudis sacrificium Domino immolare; W.]

'† [In nomine sanctæ et individuæ Trinitatis, Patris, Filii, et Spiritus Sancti, Amen. In messem dominicam, in qua non reges et principes seculi, sed regnorum victores et regum per fidem apostolos, et successores eorum Christus mittendos elegit falcem terrenæ dominationis, charitate frigescente, cernentes effrænatius currere, quam cælestis regula patiatur, qua reddi jubentur Cæsari, quæ sunt ejus, et quæ sunt Dei, Deo; dolore cordis concutimur, et amaritudine replemur horroris, timentes, quod dum occurrere malis negligimur, indignationis periculum incurramus. W.]

‡ [non contemnenda portiuncula, W.]

vine rights and canonical statutes, but also against the liberties granted by kings, princes, and other great men of the kingdom, and this not without offending the supreme King, and to the perpetual danger of the souls of our temporal king, and of the great men of the kingdom, and of our own subjects, we can no longer pass them over with connivance. We, by the authority of this council, forbid and ordain, that if it happen from this day forward, which God avert from the sight of the faithful sons of holy mother Church, that an archbishop, bishop, or other inferior prelate be called by the king's letters before a secular judicature to answer there upon matters which are known to concern merely their office and court ecclesiastical, as whether they have admitted or not admitted clerks to vacant churches or chapels, or have instituted or not instituted rectors in the same; 'whether they have excommunicated or denounced excommunicate their subjects interdicted*, or consecrated churches, have celebrated orders, have taken cognizance of causes purely spiritual, as tithes, oblations, bounds of parishes, and the like, which cannot concern the secular court; 'or have taken cognizance of the sins of their subjects, or their excesses, as perjury, breach of faith, sacrilege, violation, or perturbation of ecclesiastical liberty, (especially because such violators and perturbators do [b]*ipso facto* incur the sentence of excommunication by charters granted by our lord the king to the Church,) or whether they take cognizance of actions personal concerning contracts, or [c]*quasi* contracts; trespasses, or *quasi* trespasses, either between clergymen, or between clergymen complainants and laymen defendants; or whether they have not compelled ecclesiastical persons amerced at the command of our lord the king to pay such amercements, or have not themselves paid them for them†;

'* [suspenderit, vel interdixerit, excommunicatos suspensos vel interdictos denunciaverit, W.]

'† [aut quia cognovit de peccatis, et excessibus subditorum, sicut de perjurio et fidei transgressione, sacrilegio, violatione ac perturbatione ecclesiasticæ libertatis, cujus violatores et perturbatores, necnon et libertatum per chartas domini regis ecclesiæ concessarum contradictores, in sententiam excommunicationis incidant ipso facto. Item, si vocetur prælatus ad judicium seculare, pro eo quod cognovit inter clericos suos, vel inter laicos conquerentes et clericos defendentes in personalibus actionibus super contractibus aut delictis vel quasi; aut pro eo, quod personas ecclesiasticas ad mandatum domini regis, in judicio seculari non exhibet; seu clericos in foro seculari pro negotiis ad forum ecclesiasticum per-

or whether they have exercised their canonical accustomed jurisdiction in the churches or chapels annexed to their bishoprics and monasteries, and vacant by the death of their prelates; or whether they have done or not done any thing of this sort pertaining to their office*, we ordain by authority of this present council, that archbishops, bishops, and other prelates do not come, when they are called for such spiritual matters; since no power is given to laymen to judge God's anointed; [d]but they are under a necessity of obedience. Yet that deference may be paid to royal majesty let them go, or write to the king that they cannot obey such royal mandates but [e]at the hazard of their order†. ['f]If the king in his [writs of] attachment, prohibition, or citation make mention of the right of advowson, of chattels, of the trespasses of his subjects, or bailiffs; (the correction of whom he affirms to be in himself only) not of tithes, or of the breach of faith or perjury, not of sacrilege, or of the perturbation of ecclesiastical liberty, then let the said prelates intimate to him that they take no cognizance of advowson, chattels, or other things belonging to his court, and intend no such thing; but of tithes, sins, and other mere spiritual things belonging to their office and jurisdiction, and to the health of souls; admonishing and entreating him not to obstruct them as to the aforesaid particulars‡. And beside this, let the bishop who is particularly concerned go to the king, and admonish him over and again that he consult his soul's health, and wholly desist from such mandates: and if he does not, then upon solemn notice given by the bishop, let the archbishop, if in the province, or else the bishop of London, as the dean of the bishops, calling two or three

tinentibus, amerciatos non compulit ad amerciamenta exolvenda, seu ipsa pro eisdem non solvit. W.]

['* [pertinentia ad officium pastorale, et ad forum seu jurisdictionem ecclesiasticam evidenter; W.]

† [Johnson *omits*, et subversione ecclesiasticæ libertatis, W.]

‡ [Et si forte dominus rex in suis inhibitionibus vel summonitionibus, non de decimis, sed de jure patronatus, non de fide mentita seu perjurio, sed de catallis, non de sacrilegio vel perturbatione ecclesiasticæ libertatis, sed de transgressione subditorum vel ballivorum suorum, quorum correctiones ad se tantum asserit pertinere, fecerit mentionem; tunc intiment ei prælati prædicti, quod non de patronatu, cujus cognitionem rex de facto exercet, neque de catallis seu aliis ad forum ipsius pertinentibus, cognoscunt seu cognoscere intendunt; sed de decimis, peccatis, et aliis mere spiritualibus, ad officium et jurisdictionem eorum pertinentibus, et ad animarum salutem; monendo et rogando eundem, quod ipsos non impediat in præmissis, W.]

more of the bishops to him, go to the king and admonish him, and earnestly require him to supersede the aforesaid mandates; and if our lord the king contemning such exhortations and admonitions, do by himself, or by others proceed to [make] such attachments and distresses, then let the sheriffs and bailiffs whatsoever they be, who make the attachment or distress, be laid under the sentences of [g]excommunication and suspension by the diocesans of the places in form of law*. Let the same be done, if the sheriffs or bailiffs make such attachments, or distresses, during the admonitions to our lord the king to be made in manner aforesaid. And if the sheriffs or bailiffs persist in their hardness, let the places in which they dwell, and the lands which they possess in the province of Canterbury, be laid under an ecclesiastical interdict, by authority of this present council, by the diocesans of the places, after solemn notice of the diocesan [principally concerned†.] And if they who make such attachments be clerks and beneficed men, let them be suspended from their office, and if they persist in their malice, be forced to desist, and make satisfaction by withdrawing from them the profits of their benefices; and if they be not beneficed, let them not be admitted to any benefice within the province of Canterbury for five years' time, [h]though they be presented. But let the clerks who wrote, dictated, or signed the writ of attachment, or distress, or gave their advice or assistance towards it, be canonically punished: nor let any of those who are for any reason suspected of the aforesaid [crimes] be admitted to any ecclesiastical benefices till they have purged themselves from them. And if our lord the king having been sufficiently admonished, or any other secular power, yet do not revoke the attachments, let the bishop who has been distressed, put the 'streets, vills and castles‡ which our lord the king, or other secular power, holds within his bishopric, under an ecclesiastical interdict. 'And if the king or other secular potentate per-

* [Ne procedant contra ipsos attachiatos, per locorum dioecesanos, in forma juris, per suspensionis, et excommunicationis sententias arceantur, W.]

† [in cujus episcopatu tales fuerint districtiones, W.]

'‡ [terras, vicos, villas, et castra, Lynd. p. 317; terras, villas, dominia, (vicos, MS. E.) et castra, Wilkins, vol. i. p. 748.]

sist in his hardness*, let other fellow-bishops resent such a distress as committed in common upon them all, and as a public injury to the Church, and lay the cities, demesnes, boroughs, castles, and vills of the king himself, or of the other power being within their bishopries, under an ecclesiastical interdict by authority of this present council. And if upon this the king do not within twenty days after revoke such attachments and distresses, but rather lay his hand more heavily upon the Church†, then let the archbishop and bishops lay their own dioceses under an ecclesiastical interdict. Let the same be done as to the lands, castles, and boroughs that enjoy royal privileges within the said province. And if any bishop be found remiss in this respect, let him be severely reprehended by his metropolitan, and if he persist in his neglect, be canonically punished by him. And let his diocese notwithstanding be laid under ecclesiastical interdict by the consent of all the prelates, and by his own given in this present council. And if the acts of process are demanded from any bishop, judge ecclesiastical, or inferior prelate, who is compelled by distresses, or who voluntarily appears before our lord the king, or his justices, to allege the privilege of his court, [i]in a case not allowed by law, viz., to admonish them to desist from their injuries; to the intent that by those [acts] it may appear, whether he has in any of the aforesaid cases acted contrary to the king's prohibition; or if any oaths, excuses, or purgations are required thereupon; let him by no means shew the acts, or give his oath; since the instruments of this sort may be shewed [j]by the parties, or by one of them if there be occasion. And if he be a clerk who is arrested on this account, let the diocesan of the arrested, or impeached clerk, or the archbishop, or the

* [Johnson here follows the abridged form in Lyndwood's text, p. 317, 18, rather than that in the Oxford appendix, p. 16, which agrees with Wilkins as below:

Et si rex vel alia secularis potestas contemptis pœnis hujusmodi, in sua duritia perseveret, tunc archiepiscopus ad denunciationem episcopi conquerentis, convocatis duobus episcopis, vel tribus, aut pluribus, quos duxerit evocandos, si in provincia præsens extiterit; alioquin, episcopus London. tanquam decanus episcoporum, duobus episcopis vel pluribus sibi adjunctis, dominum regem adeant, et ipsum moneant diligenter, requirentes, quod a mandatis supersedeat supradictis.

Et si dominus rex hujusmodi exhortationibus et monitionibus obauditis, ad attachiationes vel districtiones per se, vel per alios processerit, W.]

† [Johnson *omits*, et effectus eum Pharaone durior inter flagella pœnarum, Wilkins and Lyndwood, app., p. 17.]

bishop of London as dean of the bishops, taking some other bishops with him, demand him, and punish them that detain him, as if the arrested party were a bishop. And in this case let the proceedings be according to the punishments before expressed, if there be occasion.

[a] These are the boldest constitutions that were ever made in an English convocation: nor would any king ever have been patient under such loads of reproach as were cast upon him by all orders of men but Henry the Third, whose foibles, and especially his forgetfulness of promises, had made him contemptible at home and abroad: nor would he probably have borne such attempts as these of the bishops, but that he was at present embarrassed with his barons. Yet probably some public opposition was made to these constitutions. See Archbishop Peckham's preface to his Constitutions at Lambeth, 1281.

[b] Magna Charta was passed into a law by this king A.D. 1225, and it was renewed by him again A.D. 1253, at which time this Archbishop Boniface and his suffragans, solemnly with lamps in their hands, pronounced sentence of excommunication against the infringers of it in Westminster Hall*. Lyndwood says that *Charta de Foresta* is also here meant.

[c] *Quasi* contract is, when a man takes care of the goods of an absent friend, or of the estate of a minor or lunatic, in which cases there be no real agreement, but yet the civil law supposed one. *Quasi* trespass is, when a man hires or borrows a horse, but keeps it somewhat longer, or rides it farther than he said he should.

[d] This is taken from *Decretal.*, lib. i. tit. 2. can. 10. *Laicis super ecclesiis et ecclesiasticis personis nulla sit attributa facultas, quos obsequendi manet necessitas non imperandi autoritas.*

[e] Of this see the whole title now mentioned.

[f] [Boniface here hints, in what cases the temporal judges sent their attachments and prohibitions against the ordinaries, viz., when they took into their cognizance causes concerning advowsons, chattels, and trespasses: but he mentions tithes, breach of faith, that is, of covenants and of oaths, as things which the king and his judges owned to belong to the ecclesiastical court †.] [Addenda.]

[g] That is, that one of these sentences be inflicted, according to the quality of the offence and the offender, says Lyndwood. But the reader will here observe the great injustice of these sentences, by which the principals are acquitted, and the instruments only censured.

[h] Lyndwood here observes that this part of the constitution did not take place ‡.

* [See vol. i. p. 140.]

† ["See Cosin's Apologie of certaine proceedings in Courts Ecclesiasticall, P. i. c. 12. p. 91, &c.; 8. p. 50." MS. note Wrangham.]

‡ [The following is the entire gloss to which Johnson refers;

*Præsentati.* Ex collatione tamen, electione, vel alia provisione, ut videtur, bene possunt admitti: quia in eis non procedit hæc constitutio. Sed super hoc dic ut notavi, *supra. de jure patro. c. per provinciam. ver. non tenere. ver. sed ut melius.* Provinciale, lib. v. tit. 15. p. 317; cf. ibid., p. 218.]

[i] I follow Sir H. Spelman *in casu a jure non concesso. Oxf. nisi in casu a jure permisso**. Lyndwood's text is *nisi in casu a judice permisso:* nor does it appear how his text stood here when he wrote his gloss. I suppose the meaning is in a case not allowed by the temporal law; as to the preamble of this constitution, I have chiefly followed the Oxford copy. It is not in Lyndwood, and Sir H. Spelman's copy seems not to be in its order; yet some words in this latter are preferable to those in the other. I have not advertised my reader of the variations, because they are of no great consequence, and do not affect the body of the law.

[j] See Const. of Otto, 29.

[Lynd., p. 217.] 2. [k]If when a man has recovered his right of advowson in the king's court, the king write to the bishop, or to another that has the right of institution, to admit the clerk presented by the recoverer, let him admit him, if the benefice be vacant, and there be no canonical impediment, lest an injury be done to the patron. But if the benefice be not vacant, the prelate may excuse himself to the king†, by answering, that he cannot fulfil the king's mandate, because the benefice is not vacant. But the recoverer may again present him that is in possession, that so the right of the recovering patron may be evident for the future.

[k] This chapter is not distinguished from the foregoing in Sir H. Spelman nor in the Oxford copy; but it is clearly upon a new subject, and Lyndwood treats of it by itself.

[p. 318.] 3. Farther, because ambition, which lewdly imitates virtue, esteems nothing unlawful that is profitable, and cares not by what inventions it satisfies the thirst of a covetous mind; while thinking gain to be godliness it makes damnable purchases of preferment; with the approbation of the sacred council [l]we strictly forbid clerks of what condition and order soever to take possession of parochial or prebendal churches with cure of souls, or other ecclesiastical benefices, dignities, or parsonages, by their own authority, or cause themselves to be thrust into them by a lay power: and if any one be thrust in without ecclesiastical authority by a lay power, let him be excommunicated in due form of law, and so denounced by the diocesan, and be *ipso facto* perpetually deprived of that benefice. And if he obstinately persist‡ in his

* [nisi in casu a jure concesso, W., permisso, MSS. L. E.]

† [Johnson *omits*, vel suis justitiariis, *Wilkins and Lyndwood.*]

‡ [Johnson *omits*, Per duos menses, *Wilkins and Lyndwood.*]

intrusion after such sentence passed, let the profits of those benefices [which he has elsewhere] be wholly withdrawn from him till he make satisfaction, by the diocesans of the places where they lie, after solemn notice given by the bishop in whose diocese the intrusion was made, and whose monition and excommunication he for so long time contemned. And if he that was so thrust in remain under the sentence of excommunication by the space of a year, let him not thenceforth be admitted to any ecclesiastical benefice in the province of Canterbury. If another clerk were so thrust in as his proctor, let process be made against the proctor in the same manner, and let him be liable to the punishments aforesaid. If the proctor were a layman, let him be excommunicated in form of law, and publicly denounced as such. And let his principal, if absent, be summoned, and if he appear and ratify the fact of his proctor as to this point, let him be liable to the punishments aforesaid. But if he contumaciously absent himself for three months, let him be involved in a greater excommunication, and yet incur the punishments before provided, since he adds disobedience and contempt to his sacrilege. If he be out of the kingdom let him be proceeded against in the like manner, after a citation, time being allowed for his being beyond sea. And let the church or prebend into which the intrusion was made be put under ecclesiastical interdict. Let the fautors and abettors in such an intrusion, if they are clerks, incur the punishments before provided against clerks, and if laymen the punishments against laymen. And let the places and lands of such intruders be put under ecclesiastical interdict, unless they make satisfaction within a month. But if such intrusions be made by royal power, let our lord the king be monished by the diocesan of the place to cause them to be revoked within a competent time; or else let the lands and places, which our lord the king hath within that diocese in which the intrusion was made, be laid under ecclesiastical interdict, according to the form above mentioned: if the intrusion be made by any other great man, or potentate, let them be coerced by the sentences of interdict and excommunication, as above. And if they patiently bear these sentences passed on them on this account for two months,

thenceforth let their lands and places which they have in [m]that diocese be put under ecclesiastical interdict by the diocesan of the place, and let the aforesaid sentences not be relaxed till they make competent satisfaction for the injury, disobedience and contempt.

[l] Since the other two copies agree, I suppose that Lyndwood altered the series of this constitution, but not the sense, excepting that he makes no mention of clerks seizing benefices by their own authority *.

[m] *In illa diœcesi*, Sir H. Spelman and *Oxf.* *In alia*, Lyndwood.

[Lynd., p. 349.] 4. Farther it sometimes happens, that men excommunicate [n]at the command of the prelates, [and] taken up and imprisoned according to the custom of the kingdom, are dismissed sometimes by the king, at other times by the sheriff, or other bailiff without consent of the prelates (at whose mandate the enlargement of such men ought to be granted) and before satisfaction is made. And excommunicates very often are not taken up, and the king's letters for taking of them up are not granted. Sometimes the said king, sheriffs, and bailiffs communicate with such excommunicates that have been publicly denounced, in contempt of the keys of the Church, to the subversion of ecclesiastical liberty, and to the hazard of their own souls. Being therefore willing to apply a proper remedy to this evil, we ordain that excommunicates so taken up and so escaping out of prison, be publicly and solemnly [o]excommunicated, and denounced excommunicate in such places as the ordinaries shall think fit, with bells tolling, and candles lighted, to the greater confusion of the enlargers and of the enlarged. Let the sheriffs and bailiffs who dismissed them without satisfaction to the Church be excommunicated in due course of law, and so denounced: yet, if they did it with the king's mandate, let them be more gently treated at the discretion of the ordinaries. If the customary writ *de excommunicato capiendo* be denied, when it is required in a case where it ought to be granted according to the approved custom of the kingdom, let our lord the king be monished by the prelate who [p]writes for the taking up of [the excommunicate], that he grant it, and cause it to

* [Johnson seems to have overlooked 'per se' in Lyndwood's text, Provinciale, p. 319.]

† [So Wilkins.]

pass. But if he do it not, let his cities, castles, burroughs, and vills which he has in the diocese of him that writes on this occasion be put under ecclesiastical interdict by the bishop so writing till the denied letters be granted and have been executed according to law. Let [q]such as communicate with excommunicates be proceeded against with the censures of ecclesiastical discipline.

[n] Lyndwood so understands these words, as if the offender were taken up at the command or mandate of the prelate, but then explains mandate by request. He seems to me not to have hit upon the true construction of this sentence*.

* It was no unusual thing in these ages frequently to repeat the publication of the sentence of excommunication; and the canon law allowed, and in some cases required it.

[p] That is, who certifies the excommunication to the king, and requests the *capias* †, and who, if he refuse to certify, may be compelled by the archbishop, says Lyndwood ‡.

[q] Sure they had forgotten that the king was one of those who had offended in this point, according to the foregoing part of the constitution.

5. [r]It sometimes happens that clerks, without respect of persons, without licence of the prelates, are seized as malefactors, or suspected of some crime or personal injury by a lay power, and thrust into gaol, and not surrendered to their ordinaries upon demand, to be tried freely according to the canons, although they were not caught in the fact, nor convicted: and if clerks who are charged with crimes do not appear upon a summons from a secular judge, they are banished out of the kingdom: now because ecclesiastical liberty is confounded, when a clerk is judged by a layman, we ordain that if the clerks so taken be well known and honest, they who take and detain them, and refuse to surrender them at the demand of their ordinaries, be publicly denounced excommunicate by the ordinaries of the place. And let the place in which they are detained, and the lands of those who take and detain them, be put under ecclesiastical interdict till their bodies are surrendered and competent satisfaction be made. [Lynd., p. 92.]

* [*Mandatum*, i. e. Rogatum, vel intelligas proprie: quia ad mandatum Ecclesiæ judex sæcularis tenetur præstare auxilium judicibus ecclesiasticis ad puniendum criminosos et rebelles... Et si judex sæcularis non vult præstare auxilium, potest compelli per excommunicationem. Lyndwood, gloss, Provinciale, p. 350.]

† [Provinciale, p. 351-2, gloss, *Dari debet.—Præsentantem.*]

‡ [Ibid., p. 350, gloss, *Prælatorum.*]

Let such as falsely charge them with crimes, or maliciously invented calumnies, for which they are seized and injustly detained, be denounced *ipso facto* excommunicate, [s](as they are by the council of Oxford): let clerks who are wanderers, and not known, when taken and detained for any cause, be demanded of the king, or of him who has power to surrender them (if they retained their [t]clerkship) by the ordinaries of the places, that he may restore them to be freely tried by the Church. And if they be denied let the opposers and detainers be proceeded against by the punishments above mentioned. [u]And if the clerks surrendered to the Church have been amerced by the secular judge for wrong done to any person, let not the prelates compel the clerks to pay the amercements, since they were not condemned by their proper judges. And if it happen that the prelates are distressed, or attached on this account, let them defend themselves by the remedies before mentioned. Let the same be done as often as ecclesiastics are amerced by a secular judge for matters
[Lynd., p. 312.] which belong purely to the ecclesiastical court*. If the clerks have purged themselves of what was objected against them in a [x]canonical manner; and yet a lay-power seizeth and detaineth their goods; let them who seize or distrain them be
[p. 321.] compelled to restitution by ecclesiastical censure. If the clerks when taken have their tonsure and clerkship, but have been maliciously [y]shaved while they were in custody, and hanged, or otherwise punished, let those who shaved or hanged, or otherwise punished them, or gave their advice or assistance toward it, be liable to the punishments above mentioned: and let the like punishments be inflicted on them
[p. 308.] who banish such clerks. And if any clerk be defamed and lawfully convicted of transgressing the laws concerning forests and parks before his ordinary, or confessing his crime to him, let him have a severe ransom laid upon him in proportion to his transgression, if he have goods of his own; and let the ransom be assigned to the injured party. If he have not, let the bishop lay upon him a severe personal punishment in proportion to the fault, lest assurance

* [The order of the next four sentences in Wilkins differs by the insertion at this place of the constitution, "De clericis diffamatis de foresta," answering to Johnson's last two sentences.]

of impunity render men presumptuous and licentious in offending.

[r] Here Lyndwood observes that these constitutions of Boniface were for the most part neglected, and he says that he passed over such as were not agreeable to common law.

[s] *Ipso facto* excommuuications sprung up in this age. The term is not used in the first constitution of Archbishop Langton, to which Boniface here refers; but it seems the general excommunications published by him were now interpreted as meant *ipso facto*. That which distinguishes this excommunication from others is that it is incurred from the minute that the penal fact was committed, whereas other excommunications had no effect till denounced. If indeed the fact by which a man excommunicated himself was not known by any but himself, it could not expose him to the external consequences of a Church censure till by his own confession, or some other means, it came to light, and till the sentence had been published against him; yet even in this case he was supposed to be excommunicated in *foro interno*, from the time of his committing the offence: and therefore if a man received orders while under such a secret excommunication, he was irregular, and the pope's dispensation, or the bishop's at least, was necessary in order to qualify him for the exercise of his function; and if he after the fact committed, and was conscious of his being excommunicated, performed any action which was inconsistent with the state of an excommunicate, he was bound to do penance for it before he could have absolution.

[t] That is, says Lyndwood, if he were apparelled like a clerk, and had his tonsure on the crown of his head, and his hair shorter than the lower part of his ears; and had not before his being taken into custody carried himself as a layman.

[u] Here is a clause in the Oxford copy omitted both by Lyndwood and Sir H. Spelman, whether because it was not genuine, or that it was not very intelligible, cannot be certainly said. It supposes the bishop fined by the secular judge for not bringing or sending the clerk to the secular court: and adjudges all concerned in levying the fine to the punishments provided against clerks in the foregoing constitutions of Boniface*.

[x] That is, by the oath of a competent number of those of the same, or a higher order.

[y] That is, have had all the hair of their head shaved off, so that the tonsure of their crown cannot be discovered, nor the canonical cut of their locks be seen.

* [The following is Wilkins's text of the omitted passage:

Et si reddantur, libere judicentur, non expectatis justitiariis quibuscunque. Atsi justitiarii clericis eisdem coram iis non exhibitis, episcopum condemnent in pœna pecuniaria pœnæ superiores in ipsos justitiarios, sive clerici fuerint sive laici, proferantur. Clerici autem domini regis, vel quicunque alii, qui executionem hujusmodi pœnæ prosequuntur dictando, scribendo, sigillando vicecomitibus vel aliis ballivis hujusmodi mandata dirigendo, pœnis subjaceant in clericos promulgatis, superius annotatis. W.p.750.]

6. [z]Whereas some laymen making mutual contracts with clergymen, and confirming the contracts by pawning their faith, and by corporal oath; and yet being convened by the ecclesiastical judge for contempt of their faith and oath, obtain the king's prohibition, that so they may decline the enquiry of the ecclesiastical judge for perjury and breach of faith*: we provide that if laymen be the obtainers they be coerced with an excommunication (as is abovesaid): and if they do not desist, and have an estate in immoveables, let their lands be laid under interdict: if they have not, let their [a]servants, that are not slaves, be admonished to leave them within eight days; or else let the same sentence of greater excommunication be passed on them. If a clerk or religious man be guilty, let canonical punishments be inflicted on them: if the clerk persist, let him be proceeded against with the punishments above mentioned for pertinacious clerks. [b]If a layman be plaintiff, let him not be admitted, except he have a lay-fee. If the bishop be distressed let our lord the king and the distressor be proceeded against as above is expressed. Let the same be observed in the like prohibitions. Let the same be observed if a third party [c]by way of traverse come and offer the prohibition, or cause it to be offered; if he in whose behalf it was evidently obtained do stand by it either in word or deed†.

[z] This is not either in Sir H. Spelman nor in Lyndwood, yet it is so much of a piece with the rest of these constitutions, that I cannot doubt but that it is genuine: and I was willing to give my reader Boniface's whole scheme, whereby he hoped to overpower the king, and all his secular ministers; and which is indeed very singular.

[a] *Mercenarii, non vacatæ personæ.* Slaves are not by any civil law owned to be persons: for they have no rights, and cannot sue, or do any action in their own names, therefore they are persons vacated, or annulled.

[b] The foregoing clause of the canon supposes the plaintiff to be a clergyman: here the layman is supposed to be plaintiff, but is denied that privilege unless he be a landed man. For Boniface would not allow any

* [Itaque, cum nonnulli adinvicem, et plerumque cum (a) clericis contrahentes ipsos contractus fidei datione vallantes, aut corporali præstito juramento firmantes, qui fidei sibi aut sacramenti præstiti religione contempta, coram judice ecclesiastico conventi regiam prohibitionem impetrant, ut super perjurio et fidei læsione examen ecclesiastici judicis sic declinent, W. The word 'a' is here enclosed as apparently redundant.]

† [Here follow in Wilkins the constitutions given below with the numbers 16, 17.]

worthless person to charge a man in holy orders with breach of faith or oath.

[c] Lat. *ex traverso*. Whatever the defendant does or says, in order to evade an indictment brought against him, may be said to be done by way of traverse.

7. [d] Because ecclesiastical judicature is likewise [e] confounded, and the office of prelates obstructed, when a Jew offending against ecclesiastical things and persons is convicted of these or other matters which belong to the ecclesiastical court by pure right, and yet is not permitted by the king, sheriffs, or bailiffs to stand to the ecclesiastical law; but is rather forced to betake himself to the [king's] court. Now we ordain that such Jews be driven to make answer in such cases before a judge ecclesiastical by being forbidden to traffic, contract, or converse with the faithful: and that they who forbid and obstruct them, and that distress judges and others on this account, be coerced by the sentences of excommunication and interdict.

[d] In translating this constitution I principally follow Sir H. Spelman's copy; Lyndwood omits it*.

[e] Ecclesiastical authority was certainly confounded by these prelates going beyond their line, and assuming to themselves a power of judging them that were without. See law penult. of K. Edw. Conf.†

8. [f] Whereas such as betake themselves to the privilege of the Church can sometimes scarce be provided of victuals by reason of the strait custody under which they are put, and that they are often dragged from the churches, churchyards, or public roads by violence, after they have forsworn their country, and being dragged from thence are slain in a cruel manner to the prejudice of the immunities of the Church: we ordain that they who hinder the bringing of victuals to such refugees whom the Church is bound to defend, be chastised with ecclesiastical censure at discretion of the ordinaries‡. We decree that they who drag them from any place that enjoys ecclesiastical immunity, or that rashly kill them, after they have forsworn their country, (since they are there under the [Lynd., p. 255.]

* [Wilkins gives it as Spelman.]

† [See in vol. i., A.D. 1064. 15. p. 530.]

‡ [Compare in vol. i. Laws of K. Alfred, A.D. 877. 1. 2. 4 (5, T.), 19 (12, T.) pp. 318—20. 327.]

protection of the Church,) be [g] punished with all the punishments due to sacrilege: one punishment not annulling the rest. Let no guards be set by a lay power in the church or churchyard against them that flee to the Church. Let those who presume either to be of those guards, or to set them there, be coerced by a sentence of excommunication in form of law. But let the Church protect [h] those only whom the canons direct to be protected.

[f] For the understanding this and other constitutions concerning sanctuaries, it is necessary to advertise my readers that the clergy of the church to which the criminal fled were bound to provide victuals for him while in sanctuary: that the criminal, while in sanctuary, had liberty of going thirty paces from the church, and forty if it were a cathedral: that though the criminal by taking sanctuary secured life and limb, yet he was not secured from pecuniary satisfaction; much less from penance, nor from paying his debts: that for greater crimes all but clerks were here in England bound to swear that they would leave the kingdom, and not return without royal licence; after taking this oath they were to take the direct road to the next port, and embark by the next opportunity; while they were in that road they were deemed to be in sanctuary.

[g] He who committed sacrilege on an ecclesiastical person was *ipso facto* excommunicate; he who is guilty of it in relation to ecclesiastical things is to be excommunicated, says Lyndwood. But if he who steals an ecclesiastical thing does at the same time burn the church, or break it open, then he is *ipso facto* excommunicated. Where the difference of excommunication *ipso facto*, and of excommunication to be passed after the fact, is very apparent: by the civil law, as Lyndwood observes, the sacrilegious were in some cases condemned to wild beasts, in others burnt alive, hanged, and sometimes condemned to the quarries, or banished.

[h] Public robbers and depopulators of the country only were excepted by canon law, (*Decretal.*, lib. iii. tit. 49, c. 6,) and, says Lyndwood, such as refused to pay their tribute. And none but catholics were capable of this privilege in any case; nor a catholic, if his crime was committed in the church.

[Lynd., p. 257.]

9. That a remedy may be found against such as infringe or disturb the liberties of the Church, or invade ecclesiastical goods, we think fit to ordain that such malefactors be denounced guilty of sacrilege [i] and excommunicate by the ordinaries of the places: and if they remain pertinacious in their malice for one month, then let their lands, and the places where they dwell, be laid under ecclesiastical interdict: and let neither sentence be relaxed till they have made competent satisfaction for their damages and injuries. And if any

regardless of the divine honour deprive the Church of her possessions or liberties, let them be liable to the aforesaid penalties: and let the sentence of excommunication, in form of law, be solemnly passed against them, till full restitution and satisfaction be made. And if these sacrilegious cause the judges or prelates to be attached or distressed on this account, let them and the attachers be smitten with the punishments declared against such attachers and distressors.

[i] In this case Lyndwood owns the criminals were not *ipso facto* excommunicate, but were to be admonished before sentence was pronounced.

10. [k] Farther, whereas the houses of clergymen, though within sanctuary, are seized by great men of the land, against their own will, who after having driven out the servants, sacrilegiously consume their goods, and reproach and beat those that oppose them; [l] and sometimes the horses of prelates, religious, and clergymen are seized on the road, and within sanctuary, and are taken away by violence to carry the goods, merchandizes, and victuals of great men*; we provide that all such sacrilegious be excommunicate in form of law, and solemnly denounced excommunicate till they restore what has been taken away, and make competent satisfaction for the wrong done. Clergymen and religious are also compelled by right or wrong to sell what they have to be sold at the price of our lord the king to the king and his officers; and sometimes to deliver the goods without pay: whereupon we provide, that they who do this be obliged by the sentence of excommunication to make up the defects of payment, or to relinquish the goods so taken by force, and yet to make competent satisfaction for the sacrilege committed.

[k] I find this in the Oxford copy only †.

[l] There are several words in the Latin clause here that are to me unintelligible, and some of them certainly miswritten, or erroneously printed; but the omitting of them does not greatly affect the sense, so far as I can judge.

* [quandoque ecclesiar. carectæ et equitaturæ dominicæ prælatorum, religiosorum aliorumque clericorum in itinere publico ac mercatis, et aliquando in sanctuariis, et consimilibus capiuntur et abducuntur violenter ad dictorum magnatum res, commercia, et victualia transferenda; W.]

† [The whole constitution is in Wilkins, vol. i. p. 752.]

[Lynd., p. 259.]

11. Whereas according to the [m]charter of privileges granted to the Church by our lord the king and his predecessors only [n]reasonable profits and services, without waste of [o]the men and goods be taken, while the cathedral or conventual churches are under the guardianship of our lord the king*. And yet his bailiffs† do violently take away the goods of the vacant churches' tenants, and destroy the parks, groves, and fish-ponds, ruin the houses, abuse the poor‡, and not only lay their hands upon what by custom they used to have§, but on that which belongs to the [p]living¶, as the corn, live-stock, and other things, by which the chapters and convents should be maintained, and on other things which cannot belong to the king on account of the [q]barony, as tithes, offerings, and the like belonging to the churches appropriated to the bishopries or monasteries: to obviate this evil‖, we ordain that when the escheators and bailiffs enter upon the estates under the guardianship of the king, the [r]prelates who have the jurisdiction do forthwith publicly and solemnly forbid all the bailiffs in general to make any such attempts: if they transgress, let them declare them to have incurred the sentence of excommunication [s]before passed on the violators and disturbers of ecclesiastical liberty, till competent satisfaction be made for the damages and injuries: which sentence if they contemn after it is denounced, let them be proceeded against by interdicts, and other punishments ordained against such wrong doers. And if our lord the king upon a monition, do not make, or cause to be made, competent restitution for the damages done by his officers, let him be proceeded against as hath been ordained in other cases touching the king. And our will is that what has been above ordained concerning the king and his officers, be observed in relation to inferior lords, if such guardianship belong to them.

* [vel alio magnate, W. Johnson's translation nearly agrees with Lyndwood's text, which however appears to be an abridged form of the constitution, and differs from the text of Spelman and Wilkins too widely for collation throughout; therefore only the more important variations of Wilkins are here given.]

† [Johnson *omits*, per tallias immoderatas, Lynd. præter tallagia immoderata, W.]

‡ [ac alios, S. W.]

§ [Johnson *omits* ratione custodiæ, Lynd., W.]

¶ [sed etiam ad bona superstitum, Lynd., S. W.]

‖ [Johnson as Lyndwood *omits*, quia talis custodiæ ratio, quæ in favorem ecclesiæ dignoscitur introducta, non debeat in ejus læsionem retorqueri, S. W.]

[m] This is meant of the fifth article of *Magna Charta*.

[n] That is, such profits as may be made without impairing the substance, or main stock, says Lyndwood.

[o] The tenants, says Lyndwood; I rather think the slaves, or rather the *glebæ ascriptitii*.

[p] By the living is certainly meant the religious, or monks in the vacancy of their abbeys. The estate of the bishop, and of the dean, or prior, and chapter were now divided.

[q] King William I. turning bishopries into baronies to be holden of him brought this inconvenience upon the Church, that the king was guardian of the temporalities during vacancy, as he was of all lands held of him *in capite*, during the minority of the heir. But the laity have disburdened their estates of this incumbrance.

[r] That is, I conceive, the guardians of the spiritualities.

[s] That is, *ipso facto*.

12. Let the archbishop and bishops summoned before justices itinerant on account of their ecclesiastical estates be allowed to appear by their attorneys or proctors constituted by letters according to the liberties and customs of the Church. Our lord the king hath been petitioned that he would allow their attorneys and proctors to be accepted, and that the justices be admonished accordingly to accept them: if they do not, but a prelate be condemned and distressed, because he did not come in person, we provide that the attachers and distressors be proceeded against, as is above expressed. Farther, because prelates and clergymen are forced to come before secular magistrates to shew by what right or warrant they use the liberties which they and their predecessors have a long time peaceably enjoyed in the name of their churches; or else they are obstructed in the liberties aforesaid. We ordain that they who are so summoned make no answer or allegation, but only length of possession*. And if they call it in question, let them not put themselves upon a trial by laymen: and if they are therefore spoiled, distressed, attached, or otherwise condemned, let the spoilers, attachers, and our lord the king, be proceeded against, as is above specified. And if a prelate be kept in custody, let the archbishop with the bishops demand him, and punish the detainers, and if he be not freely dismissed, let them proceed to interdicts, as above.

* [ordinamus quod sic vocati non respondeant, nec quod allegent longam possessionem ecclesiæ suæ, W.]

13. *Though our lord the king, great men, and other of the faithful, have given lands to churches and ecclesiastical men to be held in frankalmoin; yet they and their bailiffs compel ecclesiastical persons to do suit and service for the said lands to their lay-court, contrary to the form of donation, to the offices of piety, and the rights of churches; giving them disturbance in relation to their effects, which they have had for times long past, unless they can make proof before them of the original grants and charters, which are perhaps lost, or consumed through length of time. We ordain therefore, that if distress be made for such suits or services by the donors, founders, heirs, or other successors, they be repressed by the censures aforesaid†. Let the justices, and other judges of court, 'who [t]commit frauds in relation to the liberties of bishops and inferior prelates‡, against the charter of liberties of our lord the king, be smartly punished as transgressors of the said charter.

[t] Latin, *Convertunt amerciamenta per fraudem.* This is only in the Oxford copy.

14. [u]Sometimes princes and other faithful men do by their charters give possessions and liberties to churches or prelates, in which this or the like clause is contained, "All of such a fee or estate, which belongs or may belong to me or my heirs without any exception, I give and grant, and by this charter confirm to such a church or monastery, or to the prelates and officers thereof§." And if afterwards[x] a dispute arise in the said secular [court] concerning any particular article of the purtenances, not expressly mentioned in the charter, the secular judges affirm that the charter is void and null, because that article is not expressed in it: and so the word 'all' according to them signifies nothing but what is particularly expressed: and if the article of liberty contained

* [The order of this and the following constitution is reversed in Wilkins.]

† [Johnson *omits*, Si vero a capitalibus dominis districtio fiat pro hujusmodi sectis faciendis, compellentes et distringentes modo simili arecantur, Lynd. app. W.]

'‡ [qui per fraudem convertunt amerciamenta libertatum episcoporum et prælatorum inferiorum, W.]

§ ["Omnia, quæ ad me, vel hæredes meos de tali feudo, seu feudo, vel possessione pertinent, vel pertinere poterunt, tali ecclesiæ vel monasterio ac eorum prælatis vel ministris sine aliquo retinemento do, concedo, et hac præsenti charta mea confirmo," W.]

in the charter be expressed by special words, the same judges affirm that it is void and null, if the church or monastery hath not used that liberty. Now we provide that justices, or other secular judges who defraud churches or religious places of their possessions or liberties by such perverse interpretation, be monished by the ordinaries of the places in which they hold such courts, that they presume not to disturb or purloin the possessions, liberties, or rights of the church, under colour of such interpretation. And if they do not acquiesce upon such monitions, let the iniquity of such justices and judges, whether they are of the clergy or of the laity, be crushed by the sentences of excommunication and interdict, according to the form above described.

[u] This too, as also the two following constitutions, are omitted by Lyndwood.

[x] I read *contentio* *, not *contento*, as it is in the Oxford copy; and here I have none but that.

15. 'Because when laymen [y]die intestate the lords of the fees do not permit their debts to be paid out of their moveables, nor to be distributed piously for the benefit of the deceased, nor for the use of their children or parents, according to the disposition of the ordinaries; we provide that the said lords and their bailiffs be carefully monished to desist from such attempts, and if they do not obey, let them be restrained by the sentence of excommunication, at least as to that portion which it [z]concerns the deceased to have distributed for pious uses freely by the ordinaries of the places†. Let them be proceeded against in the same manner who obstruct the testaments of such as are tenants in villainage, and others of a servile condition, contrary to the approved custom of the Church of England. We will that the aforesaid provisions be extended to all persons, both ecclesiastical and secular, that

* [So Wilkins.]

'† [Cæterum contingit interdum, quod laicis divino judicio decedentibus intestatis, domini feodorum non permittunt debita defunctorum solvi de bonis mobilibus eorundem, nec in usus liberorum suorum, aut parentum, vel aliter pro dispositione ordinariorum, bona prædicta pie distribui sustinent pro defunctis; unde statuimus, quod hujusmodi domini et eorum ballivi diligentius moneantur, ut a talibus impedimentis omnino desistant quod si monitis parere contempserint, et bona hujusmodi intestatorum non permiserint pie distribui in usus misericordiæ, pro dispositione ordinariorum, saltem pro ea portione, quæ defunctum contingit, secundum consuetudinem patriæ, eorum presumptio per excommunicationis sententiam compescatur. W.]

have royalties which they have hitherto used. We ordain and charge that no executor be allowed to administer the goods of the deceased, till he hath first exhibited a faithful inventory of them all to the ordinary of the place. And when the will has been proved before the ordinaries, let not the executorship, or administration of the goods, be allowed to any but such as may render a proper account of their administration when required by the ordinaries of the places. [a]And we ordain by the authority of this council, that no religious of what profession soever be executors of testaments, unless it be done by the licence and will of the ordinary. And that when testaments have been proved before the ordinaries, no proving of the same wills be farther demanded by any layman. Let none hinder or cause any hindrance to the performance of the wills of the deceased, as to what is capable of being bequeathed by law or custom. Let them who presume to oppose this statute know that they are under a sentence of excommunication by authority of the present council. And let them be proceeded against as the violators of liberties by ecclesiastical censure. We also ordain that no man hinder any single woman, or wife, whether his own or another's, or occasion any hindrance to her in the just, customary, and free making of her will. Let him that does so know that he has incurred the sentence of excommunication. And we ordain that the Church have her right out of the estate of the deceased; after what is due to the lord as a debt, or gift, and the funeral expenses are deducted. We also ordain that no executor withdraw any of the goods of the deceased whose testament he executes, under pretence of having bought it; unless it were given him by the testator yet living, or bequeathed by testament[b].

[y] Sir H. Spelman here adds the word *divino*, and *judicio* ought to have been put as the substantive to it. So Stratford, 1343. 7. in Latin*.

[z] For the usual number of masses, and other devotions for their souls, and in alms to the poor. This was usually a third part†.

* [Spelman, vol. ii. p. 585.]

† ["As appears from what Innocent IV. says, who lived about this time. "In Britannia tertia pars bonum decedentium ab intestato in opus ecclesiæ et pauperum dispensanda." titt. de simonia. c. ad apostolicum. He mentions this as a custom then prevailing in Britain, which Mr. Selden thinks was only owing to the injustice of the ordinaries, and that too against the intent of the Grand Charter granted by

[a] Lyndwood calls this that here follows a constitution of Boniface, and tells us it is contained in the twentieth of Peckham, for which reason he did not write a particular gloss on it. Edit. Oxf., pag. 167.

[b] Hitherto I have followed the series of the Oxford. In the following I have taken chance for my guide, for I saw no room for choice. For farther light into this constitution see the seventh of Stratford.

16. Whereas false suggestions are often made to the king and his justices, that prelates and ecclesiastical judges take cognizance of the right of advowson, chattels, and other things belonging to the king's court, to the prejudice of our lord the king, when the prelates and judges are exercising their office in relation to tithes, and the sins and excesses of their subjects, as it concerns them to do: therefore let these wicked suggesters be admonished to desist; but if the prelates or judges are damnified or molested on this account, let such suggesters and dilators, who are hateful to God and murderers of their brethren, be publicly denounced excommunicate, as violators and impugners of Christian unity and ecclesiastical peace and liberty, till they have made competent satisfaction for the expenses, damages and injuries, both to the judges and the parties. [Lynd., p. 353.]

17. Sometimes when ecclesiastical prelates do as they ought by their office enquire into the manners, sins, and excesses of their subjects, our lord the king, and other great men, secular powers, and soldiers, obstruct their proceedings by forbidding laymen to take an oath for speaking the truth at the command of their fathers and spiritual prelates, to whom they ought to disclose their wounds that they may be cured: and sometimes they do not permit the said prelates to impose corporal or pecuniary punishment on their subjects for their faults and excesses in cases ecclesiastical, according to the canonical sanctions, in proportion to the crimes of the offenders. But because by the law of heaven as well as of [our] court, punishments and rewards are proposed for the restraints of sinful appetites, and men would run into wickedness without any check, if punishment did not curb transgressors, and wicked inclinations would get strength, as inward enemies; we therefore ordain that lay- [ibid., p. 321.]

King John, and confirmed again by Henry III. See Selden of the disposition of the goods of intestates, chap. iv." MS. note Wrangham.]

men be compelled, particularly by the sentence of excommunication, to take such oath, and to perform such penalties, whether corporal or pecuniary, as are canonically inflicted on them by their prelates; and that they who hinder them from taking such oaths and performing such penalties be coerced by the sentences of interdict and excommunication. And if distresses are made on prelates upon this account, let the distressors be proceeded against by the punishments before prescribed.

[Lynd., p. 327.] 18. Since the sacrament of confession and penance is like a plank offered us after shipwreck, and the last refuge to them that are passing the waves of this troublesome world, necessary for the salvation of every sinner: we strictly forbid under pain of excommunication to hinder any one that desires it from having this sacrament freely administered to him, or from having sufficient time for making his confession: and we do especially urge this for the sake of prisoners, who are often inhumanly and unchristianly denied it. And if time for this be sometimes granted them, it is so short and so unseasonable that it turns rather to the discomfort and despair of these wretched men, than to their spiritual joy.

[p. 352.] 19. Desiring to apply a remedy against those grievances and excesses which the beadles and apparitors of archdeacons and deans occasion to our subjects, we ordain that when they, in order to execute or do any thing necessary, come to the houses of rectors, vicars, chaplains, or any other priests, clerks, or religious, they demand nothing of them by way of procuration or duty, but that accepting what is set before them by their hosts with thanks, they be content with it: and that they do not execute their precepts by messengers and sub-beadles, but in their own persons. Let them not themselves pass sentences of excommunication, interdict, or suspension; nor denounce sentences passed before by others, without the special letters of their principals. If they do, let not the sentences so passed hold in law*, nor be taken notice of: for they are not binding. And let the beadles who act contrary to this statute, and are burdensome or injurious to the subjects of their prin-

* [ipso facto non teneant, S. W. Lyndwood has 'ipso jure.']

cipals, be severely punished, and be bound to make double restitution to those whom they have aggrieved.

20. [c]We ordain that bishops in their synods and other convocations, [′]and archdeacons in their chapters, [[d]rectors, vicars,] and chaplains of parochial churches*, in their churches do thrice every year denounce to all who would enjoy [e]clerical privileges, that they must be decently clipped, and have a shaven crown, especially before their ordinaries, and in churches and assemblies of clergymen. And let them not be ashamed to bear the marks of Him who wore a crown of thorns for them, being obedient to His Father even unto death, that He might make them partakers of His Resurrection, and of the inheritance purchased by His Blood. They who transgress against this denunciation are with menaces to be told that they who are ashamed to have Christ's sign on their forehead may implore His help to no purpose; for he who abuses his dignity ought to lose the privilege belonging to it. [Lynd., p. 68.]

[c] This Lyndwood calls the twenty-fifth; he divided the fifth constitution into four, and the fifteenth into two at least; and Sir H. Spelman's copy makes three of the fifteenth. Let my reader judge for himself. The table before Lyndwood's Provinciale makes but twenty-one†.

[d] These two words are not in Lyndwood's, yet in both the other copies. Lyndwood here says that rectors must be chaplains within the year, for this he refers to Sext., lib. i. tit. 6. c. 14, which obliges the rector to take priest's orders within a year from his institution (though sometimes it was allowed by the canon that one might be rector at fourteen), therefore it is evident that by chaplain Lyndwood meant curate, or one that was capable of officiating as curate by having received priest's orders‡.

[e] These were, not to be tried by laymen, to sue laymen before ecclesiastical judges, that laymen keeping them under custody, though without hurt, incur excommunication; and in short, that their persons were not to be molested, nor any exactions made on their estates. Lyndwood.

21. We do with a special injunction ordain that every [p. 321.]

′ * [et singuli archidiaconi, et decani, in suis capitulis, et rectores, vicarii sive capellani ecclesiarum parochialium, W.]

† [Wilkins gives the above constitution the 24th in order, and the last but one, without however affixing any numbers.]

‡ [Lyndwood's gloss and references are as follows: *Capellani.* Rectores, sc. qui debent esse capellani infra annum. *de elect. c. licet canon. li.* 6. Item vicarii perpetui qui debent esse capellani, ad minus in proximis ordinibus sequentibus, ut in *Constitutione Othonis. ad Vicariam.* Et potest etiam intelligi hæc litera de capellanis parochialibus, qui sunt vicarii temporales; de quibus *no. de offi. vica. c. unico. glossa magna. per Wil. in Cle.* Provinciale, p. 68.]

bishop have one or two [f]prisons in his bishopric (he is to take care of the sufficient largeness and security thereof) for the safe keeping of clerks according to canonical censure, that are flagitious, that is, caught in a crime, or convicted of it. And if any clerk be so incorrigibly wicked that he must have suffered capital punishment if he had been a layman, we adjudge such an one to perpetual imprisonment: but we decree that the [g]ancient laws be observed in relation to those who transgress not wilfully, or of set purpose, but by chance, through anger or madness.

[f] This is allowed by a forged decretal letter*, caus. 17. quæst. 4. c. *attendendum* †. P. Honorius III., ann. 1224. *Decretal.*, lib. v. tit. 9. c. 5, does expressly require it in some cases. But Lyndwood here supposes that in some cases the clerk convict was deposed and delivered to the secular judge to be punished as a layman. Yet he seems to speak as if he thought it at the ordinary's discretion whether he would deliver him to the secular arm, or keep him in perpetual custody. Lyndwood farther puts the question, whether a layman might be imprisoned by the bishop: and answers, though not without some hesitation, that it might be done for heresy only. And might then be done for heresy by a statute of King Henry IV.

[g] Of hard penance, I suppose.

The above-said statutes are extended both to present and future grievances[h], especially because the sentences of excommunication have been published with solemnity against the transgressors of the charter of liberties with consent of the king and great men of the kingdom, by the prelates at London.

[h] This and the following paragraph, to "done in a council," &c., are in the Oxford copy only, and Sir H. Spelman's copy only has the close and date‡.

[i] The archbishops and bishops, with the consent and approbation of the inferior prelates and chapters of cathedral and conventual churches, and the whole body of the clergy of England, did unanimously ordain the above-written for the reformation of the ecclesiastical state of England and

* [Of Urban I., (A.D. 224,) c. 2; Concilia, tom. i. col. 750.]

† [The passage is quoted from a letter of Urban to all bishops, and no doubt of its genuineness is expressed in the Decretum. In Johnson's former volume the use of an ecclesiastical gaol seems to be implied, A.D. 740. 40, 994. 16.]

‡ [Wilkins has both paragraphs together with the close and date.]

the reparation of liberty, retaining to themselves a power of adding, changing, and correcting as they shall think fit. Done in a council at Lambeth, and recited in the last action of the council, on Friday, the third of the ides of May, B the Dominical letter, A.D. 1261, in the seventh year of Pope Alexander IV. In witness whereof, &c.*

[l] I do not observe that this passage was cited in the late dispute concerning the antiquity of the rights of the lower clergy to sit and debate in convocation. Yet it seems very much to the purpose. I know some have very much degraded this Oxford copy of the provincials, with how much reason I leave to others to judge.

A constitution attributed to Boniface, though Lyndwood says that some have thought it Robert Winchelsey's.

22. [k]We have often heard from our ancestors that the [l]benefices of the holy water were from the beginning instituted with a view of charity, that poor clerks in the schools might be maintained with the profits thereof, till they by improvement were qualified for something greater. And lest a wholesome institute by time run into abuse, we ordain that in churches which are not above ten miles distant from the schools which belong to the cities and castles within the province of Canterbury, [they] be conferred on poor [m]clerks. And because disputes, which we ought to remove, do often arise between rectors and vicars of churches and their parishioners about conferring such benefices; now we ordain that the rectors and vicars, who are more concerned to know who are fittest for such benefices, do take care to place such clerks in the benefices aforesaid, who are best capable of serving them according to their own desires in divine offices, and will be pliant to their commands. And if the parishioners will withdraw their accustomed alms from them in a malicious manner, let them be carefully monished to give them; and if there be a necessity, let them be strictly compelled to it [[n]by ecclesiastical censure of all sorts.]

[Lynd., p. 142.]

[Ed.]

[k] Lyndwood doubts whether this be Boniface's or W. Reynolds'[l]. Sir [l] [R. Winchelsey's.]

* [Dat. apud Westm. 6 idus Junii, Ann. Dom. MCCLXI. et anno pontificatus Alexandri papæ iv. vii, et anno illustris regni Henrici regis xlv. per Bonifacium Cant. archiepiscopum. W. Notwithstanding this date, Wilkins calls the council 'Concilium Lambethense;' see his note Conc. Brit., vol. i. p. 755.]

H. Spelman has it not. The Oxford places it as here. It is the only provincial constitution which I find to this purpose. But Giles Bridport, bishop of Sarum, in his diocesan synod ordained that rectors or vicars shall give the benefice of the holy water to a poor clerk that is a scholar, on condition that he attended the church on all solemn days. This was A.D. 1256. See Sir H. Spelman, p. 304 *. Walter de Cantelupe had done the same for his diocese, A.D. 1240 †. Alexander of Coventry had done this earlier yet, viz., A.D 1237 ‡. See Sir H. Spelman, p. 209. But the decree of Peter Quevil, bishop of Excester, A.D. 1287, Sir H. Spelman, p. 375 §, is so like to this of Boniface that it is evident that he who drew one had the other lying before him; therefore either Peter had it transcribed from Boniface, or else Walter Reynolds [1], if he made it first a provincial constitution, took it from the diocesan constitutions of Peter, but the first to me seems most probable. William Courtney, archbishop of Canterbury, 1393, in a diocesan rescript, threatens some that lived near that city with the greater excommunication and interdict in case they persisted to refuse to have the holy water brought to them, and to pay the clerks for bringing it, which he calls a laudable custom prevailing throughout England ¶.

[1] [R. Winchelsey.]

[1] Benefice largely taken includes all payments and portions belonging to the clerks and ministers of the church without title, says Lyndwood.

[m] "To scholars only," says Peter Quevil, more exactly than Boniface.

[n] These words are not in Peter Quevil, and indeed nothing could be more unreasonable than to pass all manner of censures on men for not giving accustomed alms; and scarce any thing more unreasonable could be devised by the art or blind fury of men than most of these constitutions of Boniface.

* [Wilkins, vol. i. p. 714.]

† [Spelman, vol. ii. p. 249. Wilkins, vol. i. p. 671.]

‡ [Wilkins, vol. i. p. 641.]

§ [Synodus Exoniensis, c. 29. Wilkins, vol. ii. p. 147.]

¶ [Wilkins, vol. iii. p. 220.]

## A.D. MCCLXVIII.

### LEGATINE CONSTITUTIONS OF OTHOBON.

LATIN. [J. Athon., p. 75. Sir H. Spelman, vol. ii. p. 263. Wilkins, vol. ii. p. 1*.]

An English council celebrated by the lord [a]Othobon, cardinal deacon of St. Adrian, legate of the apostolical see to the kingdom of England, as also to Scotland, Ireland, and Wales, in the cathedral church of St. Paul, London, on the ninth of the kal. of May, A.D. 1268, and the fourth of the pontificate of Pope Clement IV., that is, in the fifty-second year of the illustrious Henry III., king of the English, Boniface and Walter, archbishops of Canterbury and York, the bishops, abbots, priors, deans, archdeacons, and other dignitaries of the Church being present.

[a] He had formerly been archdeacon of Canterbury, and was afterwards chosen pope, and called himself Adrian V., but he sat in the chair scarce forty days. His coming hither was for very good cause much resented by all degrees of churchmen, as for other reasons, so especially because according to the practice of the Roman court (which is to be very free of that which was none of their own) he by the pope's authority granted to the king three years' tenths of the clergy. The king at the end of that term complained that they had not been fully and entirely paid, therefore demands the tenths of the fourth year, to which, though the bishops consented, yet the inferior prelates and clergy returned a flat and obstinate denial, and represented the extortions made upon them in the three former years as altogether intolerable, and their own poverty as so great, that they were utterly unable to pay it.

The commands and law of the Most High were published

* ["Constitutiones domini Othoboni legati promulgatæ in concilio generali London. mense Aprili. A.D. 1268. Collat. cum MSS. Regio. 9. B. 2. Lambeth. 17. Oxon. Magd. Colleg. 185. Lyndw. Provinc. et Spelm. ex Bibl. Cotton. Otho. A. 15. 7. et Vitell. A. 2. 42." Wilkins quotes a passage from the Chronicle of T. Wikes, and also refers to Rudborne and the Waverly Annals who all (*sub anno*) fix the date as above, A.D. 1268. Sir H. Spelman places the council and its canons twenty years too early. Johnson's translation has been compared with Wilkins's text throughout, and the important variations are stated in the notes.]

of old, that the creature who had broken the yoke by departing from the peace of his God, by continuing in the observance of the law and commandments as their light, might expect the King of Peace, the Mediator, the High-Priest, who made all things new, having the hope of the promises given to the fathers as a refreshing shade. This is the glory of the adopted sons of the holy spouse, our mother Church, that they hear from her the commandments of life; preserving their heart in the beauty of peace, the brightness of chastity under the restraint of modesty, subduing the sinful appetite to the government of reason: to which end the decrees divinely promulged by the mouths of the fathers containing rules of justice and maxims of equity, have diffused themselves like rivers far and near. And the sacred constitutions of the chief pontiffs and of the legates of the apostolical see, and of other prelates of the Church dispersed throughout the world, proceed like smaller streams from those broad rivers, according to the diversity of times, which necessarily requires new remedies for such new diseases as are bred by human frailty. But unbridled desire being rooted in our first parents has poisoned their posterity, and running blindly on treads in pieces the rod of virtue and discipline, and as it were mad drunk invades the properties of others, so that it cannot abstain from what is forbidden, nor enjoy what is permitted, nor approve what is good. When we consider the ancient mischiefs of this plague we cannot but more bitterly lament the present ulcers of it, which we not only have heard of, but which we see and feel: for the present times are not more sunk below those of old in length of life, than in hardiness, and a damnable contempt of judgments. When the path of right is forsaken or perverted, truth gives place to power, favour leaves no room for justice; and whilst all seek what they think their own, the things of Christ, the good of souls, the honour of the Church, are not only clouded, but do wholly disappear through the darkness of a contemptuous ignorance. We therefore being destined from the bosom of holy mother Church by the hand of the most holy father our lord Clement, chief pontiff of the universal Church, to the office of a plenary legateship [that is, the care of planting, pulling down, and building up, which we have undertaken

not out of a willing inclination, but out of a dutiful obedience] into the famous kingdom of England, (which hath fallen of late years from the height of glory into an extinction of both powers,) as also to Scotland, Ireland, and Wales, that we may fulfil our ministry according to the doctrine of the Apostle, as also [according] to the institutes of the sacred canons, (which are imitated by secular princes in their laws,) as also [according to] the constitutions of Otho of good memory, bishop of Porto, then deacon cardinal of St. Nicolas in Carcere Tulliano*, and likewise [according to] the provisions of provincial councils, which give wholesome regulations to the manners and actions of faithful subjects[b]. Because we have found some of these observed by few, [[c]some by none,] we have thought fit with the approbation of the present council to make certain constitutions to be generally observed in an holy manner well pleasing to God; and to add certain capitula and punishments to those formerly published, which may by the divine assistance produce a wholesome reformation.

[b] The sense seems imperfect, though I have made some supplements of my own, and here followed either copy, as I saw occasion.

[c] This is only in Sir H. Spelman †.

1. Baptism is known to be the first plank which brings those that sail through this dangerous world to the port of salvation; which our Saviour instituted as a gate to the other sacraments, as the authority of the holy fathers which followed Him does testify: since then an error in our entrance by the gate is most dangerous, the [c]legate aforesaid to recall some from their execrable idolatry, who suspected danger to their children if they were baptized on the days assigned for the solemn celebration of baptism, viz., the sabbaths before the resurrection of our Lord and pentecost, hath ordained that the people should be brought off from this error by frequent preaching, and be persuaded to solemnize baptism, and to have their children baptized on the days aforesaid. And (since no one ought to die without receiving of this sacrament) that it be administered at other times by any one in

* [in regnis Angliæ et Scotiæ apostolicæ sedis legati, W. This omission excepted, Johnson's translation agrees with the text of Wilkins in this place.]

† [Wilkins agrees with Spelman.]

case of necessity, and being so administered in the form of the Church is effectual to salvation. And because the simplicity of many would make them uncapable of administering baptism in case of necessity, unless they were instructed by the ministers of the Christian faith, we find it ordained by the legate aforesaid, that parish priests having perfectly learned the form of baptism do frequently explain it in the mother-tongue on the Lord's days, that if a case of necessity do happen, in which it is necessary that they baptize, they may know and observe that [form]. We therefore extend what is said in that statute of parish priests to [e]perpetual vicars of churches, and enjoin it to be observed by them. And because it is certain that this [sacrament] cannot be neglected, or omitted without hazard of salvation, we farther ordain and strictly charge every archdeacon in virtue of his holy obedience, to make strict inquisition throughout his archdeaconry against those priests and vicars, by severely punishing those whom he shall discover to have neglected this wholesome statute, according as the case requires.

[d] See the third constitution of Otto, 1237.

[e] It is not easy to say why rectors should not be mentioned, unless it may be supposed that this was a business below them. See Corb. 5, 1127. But legates spake the language of Italy, not of England, as John Athon notes on constitution, Otto 3, 1237*. Therefore by parish priests they might mean rectors.

2. Because blind desire runs so [f]headlong, that not content with the gain arising from earthly works, it profanely sets to sale the divine sacraments, which surpass all price; the aforesaid [g]legate ordained and enjoined the consecrated oil and chrism freely and devoutly to be ministered without any spice of covetousness by the ministers of the Church, without making any difficulty on pretence of any custom of a payment to be made on this account; we therefore, by way of addition to the said constitution, do ordain that bishops as well as archdeacons make diligent enquiry in the places of their jurisdiction, against them that receive [such payments,] and punish whom they discover as [h]simoniacs, according to canonical sanctions. And if the bishop neglect to fulfil this, let him be suspended from wearing his pontificals; if

* [See above, p. 39, note †.]

the archdeacon, let him be suspended from his office, till they have made fitting satisfaction. And we charge that this be observed against them who before they admit any to penance extort somewhat from them; and who confer any sacraments by the intervention of money. Let all who hear confessions expressly absolve their penitents by pronouncing the under-written words, "[i]By the authority of which I am possessed I absolve thee from thy sins." And because he who confesseth ought in that action to express signs of humility and contrition, we charge that all who hear confessions prevail with their penitents to confess their sins to the priest with [k]reverence and humility. Farther, because the slaughter of an immortal soul is much greater than that of the short-lived body, let no man deprive him that asks it of the grace of confession; and since we hear that this is sometimes done by gaolers to their miserable captives, we ordain that if any one for the future hinder a prisoner, or any other, when he is going to die, as a punishment for his grievous crimes, from the grace of confession, let him be deprived of ecclesiastical sepulture, unless he make satisfaction, during life, at the discretion of his prelate.

[f] Sir H. Spelman has *in prælatos* for *in præceps* *.

[g] See the second constitution of Otto, 1237.

[h] Therefore by deprivation of their benefice.

[i] This is an addition to Otto's constitution, and therefore perfectly new. If this indicative form of absolution had been used before, there had been no occasion of specially enjoining it now.

[k] That is, says John Athon, he must doff his cap, and be in a bending posture, if he do not kneel down. This has long since, I suppose, been turned into kneeling.

3. The church of God not differing as to its materials from private houses, by the invisible mystery of dedication is made the temple of the Lord, to implore the expiation of sins, and the divine mercy; [l]that there may be in it a table, at which the living Bread which came down from heaven is eaten by way of intercession for the quick and dead. That therefore so wholesome a mystery might not be despised we find it providently ordained by the said [m]legate, that all cathedral, conventual, and parochial churches be consecrated by the diocesans to whom they belong, or by others author-

* [in præceps, W.]

ized by them within two years from the time of their being finished: and if they were not, the said legate ordained that they should be interdicted from solemnizing of mass until they were so consecrated; strictly forbidding abbots or rectors of churches to pull down ancient consecrated churches under pretence of raising a more fair and ample fabric, without consent and licence of the bishop of the diocese: and let him diligently consider, whether it is best to grant or deny such licence. We therefore, knowing this wholesome statute to be contemned by very many, do farther ordain that the rector, governor, or vicar of an unconsecrated church, within a year after it is built (if it may conveniently be) do request the proper bishop to consecrate the church; or else let him require the archdeacon, that he would within the said time make this request to the bishop. And if the rector, governor, vicar, or archdeacon do forbear to make such request, we ordain that from that time forward they be suspended from their office till they make such request; let the bishop who upon such request denies to do it by himself, or by some other (unless the multitude of churches to be consecrated in his diocese, or some other lawful impediment, plead for a greater length of time,) let him (I say) know that he is suspended from that time forward from wearing his dalmatic, tunic, and sandals, till he thinks fit to perform the consecration, and in the act of consecration let him resume them. Let the bishop perform the ministry of consecration gratis, and without demanding any thing at all, excepting due procuration, lest he be struck with divine vengeance like Simon and Gehazi.

[1] That temples, or Christian churches were built principally for the celebration of the eucharist there can be no doubt among men of knowledge; but that the eucharist was eaten for the benefit of the quick and dead seems to have been a new notion. The ancients would rather have said it was offered on their behalf. If this had not been a popish canon it had certainly been cited by the adversaries of the sacrifice in the eucharist.

[m] See constitution first of Otto, 1237.

4. Since the safety of Christian innocence consists in the arms of virtue, the Apostle teacheth us to put on the armour of God, and the sword of the Holy Spirit; for we wrestle not

with flesh and blood, but with the princes of darkness, who are overcome not with arms of steel, but with prayers, and tears, and virtuous actions. Since therefore the use of offensive and vindictive arms is forbidden to clergymen who are assumed into the inheritance of Christ by the law of God and man, and that even in a just cause; we, inflamed with zeal for the honour of the Church, abominate the enormities of them who, forgetting God and their own credit, dare bear arms, and associate themselves with robbers and highwaymen, and share with them in their plunder and booty; and commit such villainies not only on the goods of private men but of churches, or on such goods as were reposited in them, or in the cloisters or cemeteries belonging to them. We therefore pursue these clerks that rave with wickedness, yet with a care for their salvation, ordaining that whoever being an ordained clerk bears arms or offends in the premisses does *ipso facto* incur excommunication; and unless he do within a certain term fixed by the bishop make satisfaction at the bishop's discretion, let him from that time be *ipso facto* deprived of every ecclesiastical benefice [which he holds] in the kingdom, and yet be liable to the loss of his order. And if he have no benefice let him be uncapable of obtaining any for five years, lest he go unpunished for so great wickedness. And let not his diocesan absolve him from his excommunication till he have made satisfaction as to the premisses at the diocesan's discretion.

5. Whereas the holy gospel directs him that wanted the wedding garment to be cast out of doors; and though that be meant of the ornament of virtue; yet the outward and inward habit ought to agree together, lest the man be offensive both to himself and others; a moderation in the exterior habit has been by tradition prescribed to us both by ancient and modern fathers, and this is to be observed by clergymen, whose name imports that they are the heritage of the Lord, and who are to have their loins girt, and lights in their hands: in consideration whereof the [n]legate of good memory aforesaid ordained and enjoined that they be compelled to the clerical habit as to their clothes and the furniture of their horses, specified in the general council by having their benefices withdrawn by their bishops; so that their garments

be of a decent measure, and that they use close copes (if they be in holy orders) especially in the church, and before their prelates, in the assemblies of the clergy, and every where in their parishes, where they have undertaken churches, with the regimen of souls. And that bishops may the better reduce others to decency in apparel, and tonsure, and becoming crowns, and fitting furniture of their horses, that they take care that this be first observed by the clerks who sat at their tables; so that in garments, spurs, bridles and saddles they accoutre themselves as becomes clerks. Now we detesting the grievous abuse in the premisses, which is generally spread through the countries of our legateship, by which God is derided, the honour of the Church clouded, the celsitude of the clerical order depressed, Christ is deserted by His soldiers wearing a strange livery, so that the eye cannot distinguish a clerk from a layman to the scandal and abhorrence of all that are truly faithful: we ordain, and strictly charge, that no clergyman wear garments ridiculous, or remarkable for their shortness, but reaching at least beyond the middle of the legs, their ears visible, not covered with hair, and that they have decent crowns of an [o]approved breadth; by which their laying aside earthly things, and the dignity of their royal priesthood, is in a special manner signified. Let them never wear [p]coifs in their churches, or before their prelates, or publicly in the sight of men except in their travels. Let priests, deans, archdeacons, and all that have dignities with cure of souls wear close copes, except perchance in their journeys, or for some other honest cause they be otherwise apparelled. If any priests, dignitaries, or such as have cure of souls, or the canons of cathedral churches offend in the premisses, as to coifs, crowns, or tonsure, and do not make satisfaction upon admonition, let them *ipso facto* incur suspension from their office; and if they continue so for three months, let them from that time be suspended from their benefice; and not be absolved from these sentences by their diocesans, unless they first pay the sixth part of that year's income to be faithfully distributed to the poor by the diocesans; beside other just sentences which the prelates may pass on their subjects who offend in these points. As to priests, deans, archdeacons, and other dignitaries, who offend

in the point of apparel, we ordain the same to be observed; we leave other clerks that offend in the premisses to be punished at the discretion of their prelates. We charge archbishops, bishops, archdeacons as other prelates in virtue of their holy obedience to make diligent enquiry upon the premisses in the places subject to their jurisdiction, and effectually observe the present statute against offenders; and cause it to be observed. And if they be negligent in their enquiries, or in correcting according to the statutes those who are convicted either by the notoriety of the fact or by any other means, let the archbishops [and bishops] be suspended from the use of the dalmatic, tunic, and sandals; the archdeacons, and lesser prelates *ipso facto* from entrance into the church, till they duly exercise their office in the correction and emendation of the premisses. And whereas the episcopal dignity ought to be used for the advancement of religion, we charge all invested with that dignity to wear a habit agreeable thereto, as the canonical institutes direct. And we especially command such as are or shall be advanced from monasteries or other religious places to be bishops, that they wear their regular habit; that so dignity may not exclude a religion, to which they should consider themselves as inseparably wedded. And we strictly forbid them the use of such colours in their garments, furs, or other ornaments, as agree not with their former rule or order; but that in these points they observe the statute of the [q]general council.

[n] See constitution of Otto, 14, 1237.

[o] That is, according to their order and degree, the regulars' should be larger than the seculars', the priests' than the deacons', though the practice is contrary to this: J. Athon.

[p] The reason of this was that the coif covered the head, so that it did not appear whether they had their crown or not: therefore lawyers in holy orders used coifs to conceal their tonsure.

[q] 16 c. of the Later. council, 1216*, in which are these words; *Pontifices in publico, et in ecclesia superindumentis lineis omnes utantur, nisi monachi fuerint, quos oportet deferre habitum monachalem. Palliis difibulatis non utantur in publico, sed vel post collum, vel ante pectus† connexis.*

6. Whereas it specially concerns the honour of the Church

* [Concilia, tom. xxii. col. 1036.] † [Johnson omits, *hinc inde*, ibid.]

that carnal, secular business be not administered by hands dedicated to heavenly ministries; and we think it sordid for clergymen to gape after temporal jurisdiction, and receive it from laymen; so as to have the title of justices, and to become the ministers of justice, which they cannot do without an injury to the direction of the canons, and to the clerical order: we therefore, for the extirpating of this horrid vice, strictly forbid all rectors of churches, perpetual vicars, and priests whatsoever, to accept of a secular jurisdiction from a secular person, or to exercise [such jurisdiction]. Let such as have accepted relinquish it within two months, so as never to resume it. And lest prohibition without punishment should not be sufficient with evil minds, we have decreed that whoever offends against the premisses be *ipso facto* suspended from office and benefice; and if he intrude into either during suspension let him not escape [r]canonical vengeance. And let not such vengeance be in any wise relaxed till he has made satisfaction at the diocesan's discretion, and given oath that he will not do the like for the future. [s]With a saving to the king's prerogative in these points.

[r] That is most probably excommunication which is sometimes denoted by this phrase; yet in the common course the suspended priest by officiating incurred an irregularity from which none but the pope could release him; but it was with this exception, that if the bishop were mentioned in the canon as the cognisor (which seems to be the case here) then there was no necessity of applying to the pope.

[s] This saving entirely defeated the constitution. It is certain, in fact, that the kings of England in all ages thought they had a right of employing what subjects they pleased of the clergy as well as laity in any post of civil government; and it is certain in fact that very many in holy orders have been chancellors, treasurers, not to say chief justices, and must therefore have sat judges in life and death. The chancery was filled with clerks in inferior, if not in holy orders; and there were many in other courts, and they were deemed to be under the king's protection, and out of the reach of the bishops' courts; and the pope and bishops generally connived at it: only, if a hated clergyman got into an eminent civil station, then such canons and constitutions as this of Othobon were objected against him, and perhaps application was made to the king to remove him.

7. According to the sentence of the holy canons, we by this constitution strictly forbid clergymen to exercise the office of advocates in a secular court in a cause of blood, or

in any cases whatsoever, except those allowed by law. If any offend so as to plead against the defendant in case of blood, let them be suspended from their office. In either case let them be punished in proportion to the crime, at discretion of their diocesans. We forbid any clerk to be judge, or associate in any trial touching life or member. Let whosoever offend, besides the penalty of suspension from office, (which let them incur *ipso facto*,) be otherwise punished at the discretion of their superior; from which sentences of suspension let them by no means be absolved by their diocesans without first making competent satisfaction.

8. Not only the divine or canon law, but the admonitions of secular princes, have with a judicious piety observed how contrary it is to Christian purity to touch holy things with polluted lips and hands, by wisely and wholesomely enjoining chastity to all the ministers of Christ, and holy mother Church; which the [t]legate aforesaid imitating with a laudable zeal hath ordained and given in charge, that unless clerks, and especially they in holy orders, who publicly keep concubines in their own or other men's houses dismiss them within a month, so as never to retain them or any others for the future, they be suspended from office and benefice, and that they do not at all concern themselves with their benefices, till they have made full satisfaction in this point; or else that they be *ipso jure* deprived of those benefices. And we desiring that chastity as the very gem of virtues may shine in the clergy, whom we cannot only persuade, but command in a point to which they are tied by the bond of profession, pursuing the statute of the aforesaid legate against clerks who publicly keep concubines, do farther ordain that the archdeacons who have the care of places next under the bishop, do yearly make strict enquiry after concubinary clerks, and cause the said legate's statutes to be executed upon them. And yet let them be bound to denounce such as they discover to the bishop, that he may exercise his pastoral office upon them: and if any archdeacon or bishop (after such denunciation) be guilty of neglect, let the archdeacon be suspended from entrance into the church until he makes denunciation, and the bishop from the use of the dalmatic, tunic, and sandals until he retrieve his neg-

lect by executing what is ordained. And since he who gives assistance and consent to another in sin equals him in guilt; we ordain that they who knowingly admit clergymen to commit sin in their houses, or hire or lend their houses to their concubines, if they are clerks, be punished in the same manner [with the principals] if they are laymen, at the discretion of the bishop. And let the concubines who are convicted by notoriety of the fact, or by any other lawful means, be wholly forbid entrance into a church during divine service; nor let the [u]Sacrament be given to her at Easter: since they eat and drink their own judgment who receive that unworthily. And because the convicted in adultery, either by the notoriety of the sin, or by confession, often flies into other parts to escape punishment and to continue licentiously in his sin, we ordain that if any one do thus run from one province of our legateship to another, the bishop into whose diocese he comes, or his official at the mandate of the prelate in whose diocese or jurisdiction the refugee committed the offence, do effectually execute the [x]sentence of excommunication before passed against him, till he return to salutary penance.

[t] See Constitution of Otto, 16, 1237.

[u] Lat. *viaticum*.

[x] The sentence was supposed to have been passed in the former diocese for notorious or confessed adultery. This last clause of the constitution is independent on the foregoing part. It is pity this clause is not universally exercised as it well deserves.

9. The direction of the holy canons like a key to open the various gates of salvation and grace to men, which is therefore necessary to be had by them who have the cure of souls; and he who keeps this key ought not to wander from his station, that he may be always ready for them that call, and bring those to him by his exhortations who do not call. Though the ancient authority of the fathers have decreed this, yet it is not observed by those who love temporal profit beyond eternal. The said [y]legate providently ordained that no one should be admitted to a vicarage but he who was already priest, or at least who might be ordained deacon the next Ember-week; who renouncing all other benefices, if he

had any, with cure of souls, should swear to keep corporal residence at that place: otherwise he decreed the institution to be null, and the vicarage to be conferred on another. As to them who had already been instituted, and yet not ordained priests, he ordained that within one year from that time they should procure themselves to be ordained priests, or else that from thenceforth they should be deprived, and their vicarages given to others. But we designing to restrain the evil doers with a seasonable severity do farther ordain, that if any one detain a vicarage contrary to this statute, the fruits which he has received be not his own, but that he be bound to make restitution of them, that is, that one half of them be given to the church to which the vicarage belongs, to be converted to the use thereof; and that one part of the other half be expended on the poor of that parish, and the other part be paid to the archdeacon. And let the archdeacon make diligent enquiry every year on these points, and cause this statute firmly to be observed. And if he find that any one detains a vicarage contrary to the premisses, let him forthwith denounce the vicarage vacant to the prelate, who is to collate or institute to that vicarage, that he may do his duty in this matter, as it concerns him. And let him not institute in any other manner, nor defer institution into the vicarage after denunciation so made or notified to him: and if he offend, let him know (whatever he be) that he is suspended from collating, instituting, or presenting to any benefices, till he put into execution what is ordained. Farther, that all attempts of malice may be repressed by our industry, we ordain that if any one endeavour to retain a vicarage contrary to the premisses, and persist in his rebellion for a month, beside the punishments above inflicted, he be deprived of other benefices, if he have any, and let him be for ever incapable of the vicarage which he so vexatiously retained, and for three years of other benefices, of which he made himself unworthy by his adulterous virulence. And all this we extend not only to future but to past times, and ordain that it be effectually observed. And if the archdeacon neglect what has been above enjoined him, let him be deprived of the share before assigned to him, and be suspended by authority of this statute from entrance into the church till

he executes the premisses; beside that he incurs the indignation of God.

[y] See Const. of Otto, 10, 1237.

10. Damnable self-love and presumption subvert reason: it desires what belongs to another so as to banish charity, and to affect the death of the possessor; and when death and chance seem too slow, artifice and fiction impudently start up, and provoke the divine wrath, pretending that the living possessor is dead, or has resigned. Because this mortal disease has infected those on this side the sea in England, the said [z] legate ordained that the benefice of an absent man should not be given away on pretence of an opinion, or report of his death or cession, but that the prelate should stay till he had received fuller information; or should else be obliged to repair all damage done to the absent man; and that he who procured himself to be thrust in should, beside restitution of damages, be *ipso facto* suspended from office and benefice: and he extended this to him who seized a benefice possessed by another by violence, or fraud, by his own authority, or rather rashness; or that attempted to defend himself in it by arms after it had been declared that it belonged to another. But we providing a more perfect antidote, ordain that for the future no ecclesiastical or secular patron present any one to a church of which he has the advowson, unless he have probable notice of its vacancy: in which case, though he may present, lest prejudice be done by lapse of time; yet let the prelate to whom the institution belongs not admit or institute the presented [clerk] unless he be assured of the death of the rector, or of the lawful vacancy by some other means. Let no assurance suffice in these cases, but the corporal presence of the dead, or resigning, or otherwise vacating man; or if he be absent, let certain testimony be produced by the letters of the bishop of the diocese in whose city or diocese he shall be reported to have died, or otherwise to have made his demise, or at least of some other authentic person, signed with one or more authentic seals, or by a public instrument, or by witness sworn, and beyond all exception, not upon belief, but certain knowledge, according as the law requires. And if any one be *de facto* instituted, or

rather thrust into a church in manner contrary to what has been mentioned, let such institution be void and of none effect, nor let any right accrue to any one by means thereof, though it should afterwards appear that the church was vacant at the time of institution. And when afterwards there is full evidence of the former rector's being alive by his personal appearance, or otherwise, by authentic letters, public instrument, or by idoneous witnesses, let the prelate who instituted, as well as he who was so instituted, be bound to make restitution of the entire profits, damages and expenses, which the rector hath incurred on this account; one of them not being acquitted by the payments made by the other. And because a pecuniary penalty is not sufficient where there is a spiritual offence; we ordain that the prelate who instituted contrary to this [decree], do remain suspended from collating, instituting and presenting to any benefices whatsoever from the time that he committed the aforesaid [offences] till the possession of the church be restored to the rector. We add, that if the intruder persist in his rebellion for three months, so that the church be not restored to the rector, after evidence has been given of his being alive in manner abovewritten, then, beside the punishments aforesaid, let him from thenceforth be deprived *ipso facto* of all the benefices that he has in the kingdom, and let him be utterly disabled from obtaining that benefice which he so detained, and of which by his rapacity he hath rendered himself unworthy, when or howsoever it shall become void. And if he have no benefice, let him be for ever incapable and wholly disabled *ipso facto* by authority of this statute, not only of that benefice which he presumed thus to get, but of any other in that diocese which he has so wickedly disturbed. And we will and command that the aforesaid punishments be extended to all who at the presentation [[a]of a patron] or by any other means presume to seize benefices or churches without the canonical institution of a prelate, whether they do it by themselves or by others; as also to those who before this constitution have seized the benefice or church of a living man, and yet keep themselves seized of it; and to them who thrust themselves in without the canonical institution of a prelate; unless the seizors or intruders do wholly relinquish what they have thus taken

within three months from the publication of this constitution; without any diminution of those [punishments] ordained against such men in the constitutions of the legate aforesaid, and of the provincial councils within our whole legateship: for we do not think those punishments to be [b]in equity sufficient against such offenders; esteeming it more tolerable that a church or benefice be vacant for a length of time, than that a rape should be committed upon them for one moment by a violent possessor. Farther, when probable notice of a vacancy comes to an archbishop or bishop to whom the collation of the church or benefice belongs, in any other manner than those above mentioned; if he perchance confer that benefice or church for fear of [c]prejudice to himself by lapse of time, yet let him not give corporal possession of it, nor cause it to be given, till he have evidence of the vacancy in the manners before-mentioned. Nor let him to whom the collation is made presume to enter into possession by the authority of himself or of any other. Let the archbishop or bishop who offends herein be liable to the punishments above written. But let him to whom such collation was made, if he take possession contrary to the premisses, be for ever deprived of that benefice, and yet be liable to the other punishments aforesaid.

[z] See constitution of Otto, 11, 1237. One may wonder at first sight what should make these two cardinals successively such zealous assertors of the properties of the English clergy; we find no constitutions of our own prelates that express such a concern on this head as these two Romish emissaries in these constitutions. The truth seems to me to be this: these provisions were made in behalf of absent clergymen. The chief occasion of the long absence of clergymen was their going to Rome to attend appeals, to procure dispensations or indulgences, to get preferment, or out of devotion to the *Limina Apostolica*. It was much to the advantage of the pope and city of Rome, that the travels of the clergy thither, and their long stay there should be encouraged, and truly by these constitutions their rights were better secured in their absence than they would have been by their being at home and keeping residence.

[a] This is only in Sir H. Spelman *.

[b] I read *ex æquo*, not *ex quo*, as both copies †.

[c] It seems plain that a church was now deemed full by institution

* [Wilkins agrees with Spelman.]

† [ex quo, W. Johnson's emendation seems necessary.]

against all persons whatsoever: otherwise institution without induction could not have secured the bishop's interest in the benefice.

11. Perfection attends unity in divine and spiritual ministries, division introduces ruin*, therefore the authority of catholic unity hath enacted that there be but one rector in one church as one head to one body. But the sower of tares by the discord of several patrons in one church, and sometimes by the invention of covetous men, who pursue nothing but the temporal gain arising from the church, hath introduced a pestiferous splitting of a church, by conferring it upon more than one, and a concealment of a wicked practice by a change of names. And the covetousness of some prelates is so flaming, that they do not admit such as are presented to ecclesiastical benefices, without retaining a certain portion of the profits to their own disposal, which they either apply to their own uses, or confer it upon others absolutely, or for a time at their own discretion: the aforesaid [d]legate for the restraining thereof by law, wholly forbidding such assignments and innovations, hath ordained, that a church be never divided into several parsonages or vicarages, and that such as had been divided should be united by the first opportunity, unless a church had [e]of old been so ordered, in which case he ordained that the bishop of the place should take care that the income and parish should be proportionably divided between them, and that some one should always reside on the church, who taking the cure of souls should honestly employ himself in the celebration of divine offices and administering sacraments. We therefore, emulating the sanction of the said legate, do farther ordain that every such division made before the constitution of the said legate, (unless it were so long before that it may in law be deemed[e] ancient,) or that has been made since; as also the retainment or assignment of any portion of the profits of ecclesiastical benefices, which could not de done without simony, be wholly revoked by the diocesans of the places: and if any division, or retaining, or assignment of any portion be made for the future, we decree it to be null *ipso jure*. And lest he who collates, presents, or

* [Johnson *omits*, Nec enim ullum materiale subjectum stabit, ubi nulla sacræ rei designatio intellectum animi conformiter ad se trahit, cum in illo vel in isto divisio agit, diversum faciens quod est unum. W. The same passage is in Athon, and in Spelman.]

admits several to the same church should go unpunished, let the presenter or presenters lose the right of presenting at the next turn, which is to devolve to the next superior. But if a prelate have so collated or admitted such as were presented, or have retained to himself, or assigned to any other a certain portion, absolutely or for a time, let not only his institution, retaining, or assignment be of no force; but let him be *ipso facto* suspended from collation, institution, or presentation to any benefices, till he hath[f] revoked it.

[d] See const. of Otto, 12, 1237.

[e] Beyond the memory of man, J. Athon.

[f] For the bishop to revoke what before had been declared of no force, seems to me an inconsistency.

12. The immunity of the church was intended as a refuge for the oppressed, insomuch that it protects murderers from violence, much more innocents and things which have committed no fault, but were reposed within the verge of the church against fear of the enemy. The more dangerous the perfidy of those men is, who in contempt of the fear of God, and of the Church, and of humanity, and of their own credit, do by force take refugees, and make booty and plunder of the things; the more careful ought we to be in protecting the persons who flew thither, and of the things there reposited for security, and of the salvation of those profane men. We therefore prosecuting such iniquity with a perfect hatred, as in duty bound, do ordain, that if any one do by violence drag away any one that flies to a church, churchyard, or cloister, or prohibit him necessary victuals, (like a murderer,) or carry, or cause to be carried away by force, the things of other men there reposited; or take upon himself the dragging, prohibiting, or carrying away committed by others, or do publicly or privately give aid, or consent to them who so dragged, prohibited, or carried away, let him be *ipso facto* excommunicate, and by no means absolved till he hath first made satisfaction to the church so injured and damaged. And if the excommunicate do not within a certain time fixed by the diocesan, make satisfaction upon monition, let his land be laid under ecclesiastical interdict, and let it not be relaxed before satisfaction is made. And if he have no land, let the lord of the land in which he dwells be laid under

ecclesiastical interdict to continue so long as he dwells there, if he upon admonition do not expel him from thence within a certain time given him. If the excommunicate be a clergyman, and do not make satisfaction within the term fixed by the prelate upon admonition, let him from that time forward be deprived of every ecclesiastical benefice that he has in the kingdom: but if he have none, let him be disabled from obtaining any in the kingdom for five years: for he is justly excluded from the goods of the Church, who has violated charity and the honour of the Church, to contempt of God and damage of his neighbour. And we will and enjoin that the premised statutes be all observed against burners and breakers of churches. Farther, if any one coming to the houses, manors, granges, and other the like places of archbishops, bishops, or other ecclesiastical persons, or belonging to the churches themselves, do consume, carry away, or lay hands upon any thing without the will or permission of the proper owners or of their deputies, let him be *ipso facto* excommunicate, and not absolved till he has made satisfaction. And lest this wholesome statute be neglected under pretence of ignorance, we charge that it, or the purport of it, be always[g] declared after the first publication thereof in cathedrals, collegiate, and other churches by the chaplains and rectors thereof on every Lord's day in the year, when the greatest number of the parishioners and faithful are present.

[g] Yet this publication is more than what is necessary, says J. Athon, because this constitution is only declarative of the old law, not introductive of any thing new.

13. As the conjugal covenant, being instituted by God, is not [h]subject to human power, so ought not the solemnization of it in the sight of men, whereby it may be notified to all, to lie open to the bold opposition of any man: therefore we strictly forbid any man to hinder the solemnization of matrimony (lawfully contracted) in the face of the Church. And let bishops, whose concern it is to protect what is sacred, take care duly to punish such presumers.

[h] That is, cannot be dissolved by human power, when once lawfully contracted and consummated: for this hath long been the judgment of canonists.

14. As the laws do very much favour the liberty of the last judgment, so it is fitting that we promote the execution of it, that none may obstruct the will of the testator; therefore we have thought fit to ordain that no executor be admitted to the execution of any testament, and that no will be presented to the ordinary according to the approved custom, or be in any wise proved by him, unless he first expressly renounce the privilege of [i] his own court as to this act. And we charge and ordain that the executors of such testaments, before they meddle with the administration of the goods, do make an inventory in the presence of some credible men who know the value of the goods and exhibit it to their superior prelate. If any one presume to administer before he has made an inventory, let him be punished at the bishop's discretion*.

[i] That is, of the temporal court, for the executor is presumed to be a layman.

15. We desiring, according to the charge laid upon us, to remove hardships from churches, that they may not be afflicted with a double desolation, especially by them who as superintendents owe a daily concern to them, especially when in a state of widowhood by the loss of their rectors, do ordain that when churches are vacant the prelates to whom they are subject do not take the profits of them by the year, or by any other space of time, nor make what they receive their own; but let them be disposed of [k] as is ordained in the canons, unless perchance the prelates by special privilege or ancient custom can claim such a right; and if they offend, let them be suspended from their office till they make entire satisfaction. We wholly forbid prelates what [l] the canon also forbids them, viz., to make sequestrations of the fruits and profits of ecclesiastical benefices, unless special cases arise, in which the customs and laws allow them. We have decreed all sequestrations made in other cases, and the sentences of excommunication, suspension, and interdict passed through such occasions, to be null *ipso jure*. And let the prelate who

* [Johnson *omits*, Super approbatione siquidem testamenti ejus, qui in diversis diœcesibus beneficia, dum viveret, obtinebat, approbationi illius episcopi, in cujus diœcesi testator decessit, fidem volumus adhiberi. W.]

makes such sequestrations be *ipso facto* suspended from the use of the dalmatic, tunic, and sandals, till he has revoked them.

[k] What provision was made by the pope's canon law in this age touching this point I cannot discover. It is true indeed that the mesne profits were to be applied to the vacant church *, but the extravagant cited for it *quia sæpe*, Sext. says no such thing, and besides that bears date 1289, and therefore could not be meant here; for it was made twenty years after this constitution. The profits of a benefice might be bequeathed by the dying incumbent to his friends till the end of the next harvest if he lived to Lady-day: if he died before, generally speaking, the benefice was filled by harvest. In singular cases the ordinaries and successors strove which should get most.

[In our diocese the archdeacon had the fruits of vacant churches granted him by Archbishop Richard, successor to Becket. See Somner's Antiquities, p. 306 †.] [Addenda.]

[l] Here, too, I am at a loss where to find Othobon's canon. It is true sequestrations are discountenanced by several decretals, but no where forbid. In some cases it was necessary, as when the true possessor was not known.

16. Gratuitous concessions when abused manifest the ingratitude of him that receives them, especially when stretched beyond their bounds to the hurt of another. The piety of ecclesiastical provision allows no hard terms to be put by one upon another. But when a private person desires a proper chapel, and the bishop grants it for a just cause, yet he always uses to add, 'so that it be done without prejudice to the right of another.' And we, pursuing the same wholesome method, ordain and strictly charge that the chaplains ministering in such chapels as have been granted with a saving to the rights of the mother church restore to the rector of that church without making any difficulty, all the oblations and other things which ought to come to the mother church, if they had not intercepted them, and which therefore they cannot in justice retain. If any one contemptuously refuse to do it, let him be suspended till he hath made restitution.

17. Prosecuting the covetousness of some who, having received much from their churches and benefices, neglect their

* [This is asserted Sexti Decretalium, lib. i. c. 40, *Quia sæpe*. Cf. J. Athon in Const. 15 D; Othoboni, p. 110, gl. *Nequaquam percipiant.*]

† [ed. London, 1640.]

houses and other edifices so as not to repair or rebuild them, by which means deformity and inconveniency attends the state of churches, we ordain and charge that all clergymen take care to repair decently the houses and other edifices belonging to their benefices as occasion shall be: and that they be monished to this purpose by their bishops and archdeacons with great earnestness. And if any one for two months after such monition neglect to do it, let the bishop cause it to be done after the end of that term at the cost of the clergyman, [m]out of the fruits of his church or benefice by the authority of this statute; by causing so much [of the fruits] to be taken as may be sufficient for the finishing of the repairs. And let them also cause the chancels of the church to be repaired by those who are bound to do it in the manner before expressed. We charge the archbishops, bishops, and other inferior prelates, under attestation of the divine judgment, to keep their own houses and edifices well repaired, and cause such reparations to be done as they know to be wanting.

[m] John Athon justly makes this one of the two just occasions of sequestering a benefice: another just cause is the cutting down ancient timber-trees without necessity.

18. That seed should be fruitful and multiplied to the labourer is natural, but to reap where one does not sow is absurd: whereupon the providence of canons hath decreed that the church which hath received a visitation (which was instituted for the temporal and spiritual benefit of the churches) should yield a procuration to the visitor. But since the procuration becomes a debt on account of the visitation, it may be called a payment in a man's own wrong when that reason ceases. Therefore, whereas we are given to understand that very many prelates demand procurations of their subjects though they pay not the duty of visitation, we providing for the indemnity of churches, as well as the salvation of the prelates, do strictly forbid any of them to receive a procuration of any church whatsoever, unless when he pays to it the duty of visitation, on account of which it becomes due. And let him that receives it be suspended from entering into the church till he make resti-

tution. [n]Let not the bishops or other inferior prelates aggrieve their subjects with a superfluous retinue, or number of horses and men beyond what has been determined by the [o]constitution of Pope Innocent the Fourth of happy memory, lest the visitors seem rather to affect lucre of money than to preserve the state of the Church, or to seek the salvation of souls; and if they attempt this, let not their subjects obey them in this respect: and we have decreed that the sentences of excommunication, suspension, and interdict passed on such occasions be null *ipso jure*. And let them not at the time of visitation bring with them an intolerable multitude of men, by which the peace of churches uses to be disturbed; but let them follow that moderation which the canonical constitution of the [p]Lateran council hath publicly directed.

[n] See constitution of Otto, 20.

[o] Sext. *Decretal.*, lib. iii. tit. 20. c. 1. sect. 5, 6, which forbids any thing to be given or taken, but moderate entertainment without any money.

[p] Under Alex. III. c. 4*. There the archbishop is forbid to visit with more than forty or fifty horses or men, the bishop with above twenty or thirty, the archdeacon with more than five or seven, the rural dean with more than two.

19. God accepts no pay, nor even holocausts for sin, but some deputed for government remit punishment for money; by which means the sin of the offender and the judge are "[q]sealed up in a bag," and they are both to be condemned together; and because the sinner is afraid of no crimes which can be redeemed with money, (according to Bishop Isidore,) the malice of the will is not in the least diminished, but authority and licence is granted to sin. As to the correction of such crimes the forenamed [r]legate ordained that archdeacons should prudently and faithfully visit the churches as to the sacred furniture and vestments, and by enquiring how the nocturnal and diurnal offices of the Church are performed, and in general both as to temporals and spirituals, and that they correct what they find needs correction; that they do not aggrieve the churches with superfluous expenses, but demand moderate procurations only when they visit; that they bring no strangers with them, but be modest as to

* [A.D. 1179. Concilia, tom. xxii. col. 219, 220.]

their retinue and horses, and receive no money of any one for not visiting, for not correcting, for not punishing, and that they involve no man in an unjust sentence in order to extort money from him: therefore because these things savour of simony, he decreed that the offender should pay the doubles of what he had extorted to be distributed for pious uses at the discretion of the bishop, with a saving for other canonical punishment. He charged the archdeacons also frequently to be present at the chapters in every deanery, and there among other things to instruct the priests to know, and soundly to understand the words of the canon of the mass and of baptism, especially those which are essential to the sacrament. We therefore, to improve the statute of the legate aforesaid published against such men, do ordain that archdeacons take no money for any crime that is mortal and notorious, or which may occasion scandal, but punish it with a just animadversion. And we strictly charge bishops that they cause this wholesome statute firmly to be observed.

[q] Job xiv. 17.

[r] See constitution of Otto, 20.

20. It is a great indignity to spiritual things to traffic for them with money, since Peter said to Simon, "Thou hast no part nor lot in this matter." Thus we have found a constitution of the aforesaid [s]legate providently forbidding dignities or offices, as deaneries, archdeaconries, the profits of ecclesiastical or spiritual jurisdiction, or that arise from penance and the altar, or from other sacraments, to be in any wise granted to farm. Now we hearing that many offend against this wholesome statute do farther ordain that for the future such granting to farm be of no force: and that neither of the parties contracting be obliged to the other by such contract, however it be strengthened, by whatever authority of the law, or renunciation of the benefit to be had by this constitution: and that a third part of the profits of what is so let to farm in fact against this statute be by all means applied to the fabric of the cathedral church. All which particulars we will have to take place when a church is farmed to laymen; or when it is farmed to clergymen for above five years contrary to the constitutions published by

[Acts viii. 21.]

the legate in this respect. And farther, desiring to fore-arm the Church against a grievous mischief, we strictly forbid them to be let to farm to their patrons.

* See const. of Otto, 7, 1237.

21. The good shepherd is as watchful in looking after and defending his flock as the wolf is in invading and persecuting them. He that often goes and comes does not find what he left, because the adversary who always resides and never sleeps has taken it away*. Though bishops are tied to personal residence with the flock of God committed to them both by divine and ecclesiastical injunctions; yet because there are some in the countries of our legateship who seem not to mind this, therefore we pursuing the monition of the aforesaid [t]legate to the archbishops and bishops in this respect with an emulous zeal do exhort them in the Lord, and under attestation of the divine judgment, and in virtue of their holy obedience, that out of care to their flock, and for the comfort of the churches which they have espoused, they be present especially on the solemn days in Lent and Advent at those [churches] to which they have plighted their faith, and there consecrate the holy chrism, and the holy oil, and the oil for the sick on Maunday Thursday every year, (unless they are obliged to absent themselves on these days for some just cause at the command of their superiors,) that they may carefully keep watch, as their name of bishop intimates, and as the ministry committed to them requires, which carries as much burden as honour along with it.

[t] See const. of Otto, 22, 1237. There is King Henry's letter to the bishop of Hereford extant. Sir H. Spelman, vol. ii. p. 316 †, in which the king charges the bishop to return to his church and reside there; or else he threatens to seize the barony as his own which he had already taken into his hands, because the bishop had left his see without appointing a

* [xxi *De residentia archiepiscoporum et episcoporum.*

Pastor bonus cognoscens gregem suum debet ipsum et mentis et corporis oculis jugiter intueri, et ne ipsum insidiosus lupus invadat sicut hostis persequendo invigilet; sic prælatus resistat continue defendendo. Oportet igitur ut corporali præsentia ipsum tueatur solicite; quia vadens pastor et veniens sæpe non invenit quod reliquit, eo quod illud adversarius non recedens neque dormiens asportavit. W.]

† [A.D. 1264, Wilkins, vol. i. p. 761.]

vicar-general; the canons had followed the bishop's pattern, and were all non-resident.

22. Because the decrees of the holy fathers and of the [u]Roman pontiffs do carefully forbid alienations of the holy churches, we as we are in duty bound imitating them to the best of our power strictly forbid bishops to confer a church subject to them on another bishop, monastery or priory by right of appropriation, unless he to whom he confers it be so oppressed with poverty, or unless there be some other lawful cause, so that the appropriation may be rather esteemed agreeable to piety, than contrary to law: and if any appropriation be made contrary to the premisses, let it be void and of none effect *ipso jure;* but let it by all means be revoked by the bishop who made it, so far forth as he proceeded *de facto.* Some also, that they may swallow the whole of the profit of a church that used to be under a rector, but is now granted to them, leave it destitute of a vicar; or if they do institute a vicar, leave him but a small portion insufficient for himself and for bearing the charges of the archdeacons, and other burdens: by which means what was granted as alms, becomes a rapine: therefore providing wholesome remedies in this respect we ordain and strictly charge *, that the Cistercians, and all others who have churches for their own use, if vicars have not been placed in them, do within six months present vicars to the diocesans who are to institute them. And let the religious take care to assign them a sufficient portion according to the value of the churches; or else from thenceforth let the diocesans take care to do it. And we ordain that such as have churches to their own use do build houses in the parishes belonging to them, or rebuild and preserve them where they have been formerly built, for the [x]reception of the visitors†. We charge that the premisses be done and observed by bishops as well as others who have churches for their own use.

[u] It seems to me an impudent contradiction to truth to say that popes have by their decrees forbidden impropriations; they have indeed sufficiently forbid alienation of churches, or what belongs to them, to laymen.

* [Johnson *omits*, ut universi religiosi, exempti et non exempti. S. W.]

† [in quibus honeste possint recipi visitantes. S. W.]

However we are beholden to the legate in one particular, viz., that he allows impropriations to have been alienations, much more would he have done so if he had lived in King Henry the VIII.'s reign.

[x] And therefore John Athon intimates that there must be a closet and a chimney in it *.

23. Since the uncertainty of death oft deprives men of the opportunity of making their last wills, human piety treats the dead with mercy by distributing their goods for pious uses, so that they follow and help them, and do in a propitiatory manner intercede with the heavenly judge for them; therefore we by our approbation confirming [y] the provision made concerning the goods of such as die intestate by the prelates of the kingdom of England with the approbation of kings and barons, do strictly forbid prelates and all others whatsoever, to take or seize the goods of intestates contrary to the provision aforesaid.

[y] John Athon cites the stat. 13 Edw. I. c. 19, which was made many years after this constitution, and which therefore could not be the law here meant. Bishop Gibson declares he could not discover what the provision was here intended †. Cod., p. 572 ‡.

24. The authority of him that judges gives strength and credit to the judicature. A man of eminent station and large estate may more safely take truth for his guide, and carry a promise of acting with courage and justice: therefore, adhering to the [z] sacred canons by which it is ordained that causes delegated from the apostolical see be committed to none but those of great dignity: we, moved by that authority, ordain that causes be [a] committed by archbishops, bishops

* [That is, in the house so built or rebuilt;

*In quibus.* sc. domibus ecclesiarum.

*Honeste.* Cum privata ergo garderoba et cum chaiminice secundum usum Gallicorum, ut de aliis conticescam.—J. Athon in Const. 22. D. Othoboni, p. 121.]

† ["It is much that neither Bp. Gibson nor this author consulted Mr. Selden's piece, 'Of the disposition of intestates' goods,' who would have informed them, c. 3, that the provision here intended was probably one in King John's charter signed at Runnymead, seventeenth of his reign, which was iterated in the Grand Charter, 9 Hen. III. Si aliquis liber homo intestatus decesserit, catalla sua per manus propinquorum, parentum et amicorum suorum per visum ecclesiæ distribuantur, salvis unicuique debitis, quæ defunctus eis debebat." MS. note Wrangham.]

‡ [The words of the constitution are "quæ dicitur emanasse;" Bp. Gibson adds in a marginal note, Quære an unquam revera emanarit. The statute 13 Edw. I. c. 19, provides that the ordinary shall pay the debts of the Intestate out of his goods. See Gibson, tit. xxiv. c. 8.]

and other ordinaries, to none but persons of dignity or office, or to the canons of cathedral or other collegiate churches.

[z] The only text in the canon law to which John Athon here refers us, that contains any thing to this purpose is that Sext. lib. i. tit. iii. c. 11, and this was made by Pope Boniface VIII. above thirty years after Othobon's constitutions.

[a] John Athon here declares that this constitution was not observed in his time.

25. The covetousness of men reflects all the ardour [of love] toward themselves; which the artifices used in suits sufficiently declares: for here every one thinks that right and just which is to the hurt of his adversary, and the advantage of himself. Because frauds had been discovered in the point of citations the aforesaid [b]legate Otto ordained 'that letters of summons should not be sent by those who obtained them*; but that the judge, at the moderate expense of him who obtained them, should send them by his own faithful messenger, who should diligently seek him, and if he could not find him, should cause the letters to be read and explained on the Lord's day, or other solemn day in the church of the place where he used to dwell†. Or at least that the summons be directed to the dean of the deanery where he dwells that is to be summoned, and that he at the command of the judge faithfully execute them by himself, or by certain and faithful messengers, and not neglect to certify what he has done thereupon: but we for the more cautious proceeding in the point of summons, and for the taking away the occasion of danger, so far as we can, add to the constitution of the said legate, that when a judge sends out summons against an absent man, he commit the execution of it to the dean of the place, or to some certain person, and let him to whom it is committed, when he has faithfully executed it, certify the citation according to the form of the statute. Let no credit be given to a citation made in any other manner, [c]'nor let any punishment be inflicted upon him who is said so to have been cited‡.

'* [ut per impetrantes vel eorum nuncios in causis regni Angliæ citatoriæ literæ non mittantur, Athon. S. W.]

† [Johnson *omits*, dum missa cantatur, Athon. S. W.]

'‡ [cum nec secundum ipsam contra eum qui citatus dicitur, ad pœnam aliquam procedatur. W.]

[b] See const. of Otto, 26, 1237.

[c] Dele *cum* in John Athon's copy.

26. The laudable office of advocates, who are as it were champions of justice, is lessened by those who use it unfaithfully, and obstruct justice by entangling causes. The aforesaid [d]legate, diligently and prudently considering this among other holy constitutions, decreed that whoever would be promoted to the office of an advocate, should give oath before the diocesan in whose jurisdiction he was, either by birth or habitation, that in the causes he undertakes he will perform the part of a faithful patron. We therefore desiring to enlarge such a statute by which iniquity is opposed, justice and truth relieved, do moreover ordain that according to the contents of the said statute, no advocate be allowed to undertake a cause, unless he first shew the letters of the diocesan (before whom he is enjoined to take the oath) certifying that the oath has been given him, or unless he make oath anew.

[d] See const. of Otto, 29, 1237.

27. Since judicature ceases when the plaintiff and defendant are agreed, and the judge hath nothing to do according to the sanctions of law, but to end the dispute between them; he greatly offends who endeavours to obstruct the parties when they are disposed to peace*. But because by this means God is provoked, man is hurt, the judge's credit is impaired, controversies are cherished; we, improving the [e]statute of the said legate, who contented himself in this case with a simple prohibition, do moreover ordain that if any one for the future take any thing for obstructing of peace, he be by all means bound to restore it to him that gave it, and give as much in alms to the poor, or else let him be excommunicate from the time he committed the crime till he make restitution as is aforesaid.

[e] Const. Otto, 21, 1237.

28. As ecclesiastical censures used to be publicly notified, as a medicine intended for the cure of the party coerced; so it is expedient that the absolution of him that was bound be

* [Johnson *omits*, maxime prætextu alicujus commodi, Athon. S. W.]

made known too, lest he be avoided to his reproach, as he ought not to be: therefore we ordain that when any one is released from the sentence of excommunication, suspension, or interdict, some body be commanded to notify the release-ment at proper times and places.

29. Christian truth is so far abandoned through the pride of men's hearts, that whereas every man is scarce sufficient for the care of his own soul, yet men overrating themselves undertake the cure [f]not only of many men in one benefice, in which sometimes they do not reside, nor enter into holy orders as the cure requires; but also often heap up to themselves many and even innumerable cures, and walking in vanities and lies deceive the souls which they undertook to cure: for the thing was impossible. The constitutions of the holy fathers and of the Roman pontiffs, and other men of authority both now and of old, have carefully laboured to rescue such men from danger, who helping the flesh against the spirit, against God and man, and industriously departing from God throw themselves to the devil, rob Christ of souls, and convert the [g]alms of the poor to superfluous, not to say wicked purposes: and their labour was meritorious in regard to the faithful labourers in the Lord's vineyard; and it was a virtue in them to supply with good materials, even them who did not use them. But many hardened with covetousness have lost the benefit of these labours; such [we mean] as not only wickedly take plurality of benefices with cure of souls from the hands of prelates, but seize upon them by their own authority with violence in a damnable manner, and by wicked contrivances and evasions retain them without the [h]key of dispensation belonging to the apostolical see. The evils which from hence arise to the Church are unspeakable; for her honour is tarnished, her authority annulled, the faith of Christ is demolished, the hope of the poor is vanished and gone: because they see the mouth of the rich and powerful opened for the swallowing of every benefice that is like to be vacant. A wretched ignorant sinner boasts himself rector, he does not receive, but steals

[f] [non solum unius beneficii sed multorum intrepide curam suscipiunt, in quo quandoque, &c., W. and John de Athon: Spelman reads 'super multos,' instead of 'sed multorum.']

what is not his own. Disputes, scandals, animosities arise among the rich. It is upon this account we fear that the divine wrath flames against the men of these kingdoms, and the sins of some bring vengeance upon all. And we fear the like or worse for the future, unless God's mercy cure us by wholesome correction. Desiring therefore to cure this almost incurable plague, and exercise our office with all our might, following the constitution of the said [1]legate, and giving it farther supply, we ordain that prelates do with sincerity and diligence enquire into the past transgressions committed before this constitution of ours in relation to plurality of benefices with cure, and those who do not reside in their benefices as they ought, or not take that holy order which the cure of the benefice requires; and that they cause the statute of the general council in these respects to be observed. Let archbishops also effectually enquire concerning the premisses in their provincial councils, and correct the negligent as they are bound to do; since they must give account therefore before the severe judgment-seat of God. We ordain that for the future, when any one is presented to a benefice with cure of souls, or when the collation of such benefice is to be made, the prelate to whom that office belongs do make diligent enquiry into the life and conversation of the person presented or to be instituted, and the other particulars which the laws enjoin; and let him make strict enquiry whether the person presented or to be instituted have other parsonages or benefices with cure of souls; and if he have, whether with or without dispensation. If he affirm that he hath [a dispensation] let him take care that it be exhibited to that prelate within a time fixed by him; otherwise let him not afterwards be admitted. And if he have been instituted let his institution be null. When the dispensation is exhibited let the prelate carefully consider whether by virtue of his dispensation he may obtain another benefice, or other benefices with those which he already hath; and if he find that he hath, or had several benefices with cure without dispensation, let him by no means be admitted to that which is now in dispute. The same is to be observed if the dispensation when exhibited does not extend to benefices to be hereafter obtained, but already obtained; unless in this case the

person to be instituted take a corporal oath, that when he has possession of the benefice to which he is now instituted, relinquishing the other benefices which he had before, he will not at all meddle with them from that time forward by himself or by any other. And if he do, let him know that he is (beside the blemish of perjury) *ipso jure* deprived of whatever [benefices] he had, or might have had. After any one hath been instituted according to the premisses, let the institutor give solemn notice forthwith to the prelates of the same kingdom, in whose diocese his former benefices were, as also to the patrons thereof, concerning what hath been done, that they may dispose of the benefices belonging to them. And farther, let him write down the names of the benefices, and publicly notify them in the provincial council next coming, by which it may appear what orders have been taken about the benefices, and whether the person instituted spake truth, who said that he had no other benefices. If the instituting prelate do otherwise, let him revoke the institution within a month: or else be suspended from collating and instituting to benefices belonging to him till he shall revoke it; the right thereby devolving to the next superior. And if notwithstanding this he does concern himself in these matters, let him be suspended from entering into the church. And whereas guilt flies in the face of him who commits a crime which he has himself condemned, we detesting this mark of infamy (which the [k]Apostle declares ought to be avoided) do strictly forbid a prelate who refuses to admit a man presented to him for [l]want of holy orders, to confer the same church on another who labours under the same defect, lest he seem to have accepted the person rather than to have loved justice: and if he do this, let his collation or institution be *ipso facto* null and of none effect at all.

[f] Here I follow Sir H. Spelman.

[g] See the next constitution.

[h] Here our legate betrays his Roman sincerity; as if a dispensation from Rome could cure the evils of pluralities against which he so horribly declaims.

See const. Otto, 12 and 13, 1237.

[k] 1 Cor. ix. ult., says John Athon, but I rather think Rom. ii. 3.

[l] He speaks, says John Athon, after the old canon law, according to which none but a subdeacon at least could be rector; but at this day it

is sufficient that he be a clerk. John Athon wrote while John Stratford was archbishop of Canterbury, as he says in his gloss on this chapter*.

30. The fall of man from his dignity has given such a loose to his desires, 'that the edge of reason being blunted, and the rod of our anger, which was ordained against vice, being broken†, nothing is thought wicked that can satisfy our covetousness, which grows by being gratified. This is to be pitied in the laity, so called, because left to vulgar employs: but in those who have the Lord for the portion of their inheritance, who are to guide and govern others, it is the more bitterly to be lamented, as the guilt of it is more heinous, the toleration of it more dangerous. Of all the inventions of men against their own souls, what most of all confounds both divine and human laws we have found to be this, that whereas every single church ought to have a single rector, according to reason and the statutes of the law; yet some unreasonably and in contempt of right, having no other colour for seizing several churches, and making haste by any means to be rich, procure vacant churches to be held by them *in* [m]*commendam;* sticking by the words, not the sense of the law which sometimes permits one church to be held by title, another *in commendam.* And whereas the right of *commendam* was introduced by the law (understood in a sound sense) not by way of command, but permission for the benefit of the vacant church; these men for their own profit take not only one but many churches to be dissipated by *commendam.* Among the many perils proceeding from this plague, we observe the waste of church goods and a contempt of spiritual things to be the certain consequence of it: while these wretches‡ rake together what ought to belong to others; and spend in luxury and pomp what was designed to be [n]alms for the poor; these sins do exceed in proportion thefts and rapines, [o]and "even the sacrificing of a son in the sight of his father," according to the testimony of the divine

* [Cf. J. Athon in Const. 29. D. Othoboni, p. 129. gl. *Quod habita possessione.*]

'† [ut recusso acumine rationis, et contra mala statuta irrationabilitatis virga conjuncta, W. Spelman has also 'conjuncta'; the more intelligible reading of J. Athon, which Johnson translates is, "ut recusso acumine rationis et contra mala statuta irrationabilitatis (statutæ irascibilitatis, MS.) virga comminuta."]

‡ [Johnson *omits*, cupientes casum in malum suum, Athon. W. Spelman has suscipientes casum in malum suum.]

law*. Now we, as we are by office bound, consulting the health of souls, and the good and indemnity of churches with all possible care, do wholly revoke all *commendams* of churches hitherto made, and decree them to be null, unless the *commendam* were made for the advantage of the church, and of one only; commanding them to whom the collation or presentation of them belongs, that they collate or present to them within two months after the publication of this constitution; or else that the collation of them devolve to the apostolical see. And we forbid all *commendams* of churches for the future, unless a just and lawful cause require it to be done. 'And to prevent all tricks and fallacies we ordain, that no church be taken in *commendam* for above a year by any one that hath a benefice with cure; and that more churches than one be given to no one *in commendam* †. And if any *commendam* be granted by any one to any one in the places belonging to our legateship contrary to this wholesome statute, we decree it to be null *ipso jure*. Let the bishop who grants a *commendam* contrary to the premisses be *ipso facto* suspended from collating or presenting to any benefices till he revoke it.

[m] This practice seems to have begun in the middle of the ninth century. See caus. 21, quæst. i. c. 3. But the bishop, with consent of the patron, had hitherto the granting of them: and it was done chiefly in relation to lesser benefices. And though the constitution supposes the benefices while under *commendam* to be vacant: yet it seems a question whether they were not in some sense filled by this means: for no lapse was incurred while the church was under *commendam*. Why none but bishops are now permitted to take or hold by *commendam*, must be resolved, I conceive, into the will of our former kings, queens, and archbishops.

[n] All the oblations and tithes are sometimes called alms, and all the lands holden by the church are said to be held in free-alms, that is, without any secular service to the lords. Farther, a resident rector ought to

* Johnson *omits*, Nec præterit divinum intuitum cæcitas concedentis, qui dum ecclesiæ prospicere debet, personam hominis accipit, cui non tam curandam ovem committit, quam miserabiliter devorandam. Quia igitur nec timorem divini judicii, nec sacrorum canonum intentionem ad coertionem talium sufficere, vel etiam proficere nunc usque videntur. Athon. S. W.]

† [Et ut omnibus versutiis, adinventionibus, et fallaciis occurramus, statuimus, ne cuiquam ultra unum tantum cum cura animarum beneficium obtinenti, ecclesia commendetur, neque plures ecclesiæ alicui personæ valeant commendari. W. So also Athon and Spelman omitting 'tantum.']

be, and commonly is the best friend to the poor. One fourth part of the benefice was of old deputed for the use of the poor *. This was one pretence for infeodation and impropriations of tithes: for the infeodator, or impropriator, always pretended to take the poor's share, that so it might be more faithfully dispensed than by the incumbent.

° Ecclus. xxxiv. 20†.

31. The eminence of the pastoral chair wants many divine graces for its support, for the merit of the pastor in the sight of God, and for his better instructing the people. Among other provisions of the holy canons concerning the election of pontiffs, this deserves the first place, that the person to be advanced may be so far as possible without blemish. We therefore, as we are by office bound, with all possible diligence correcting the [p]ignorance, neglect, and dissimulation, which happens, or is practised in the confirmation of [bishops] elect, do ordain, and in virtue of holy obedience enjoin, that when the confirmation of an episcopal election is demanded, among other things concerning which enquiry ought to be made according to the institutes of the canons, let it most strictly be examined whether the elect had not before his being elected more benefices than one with cure of souls; and if he had, whether he was dispensed with, and whether his dispensation when he shews it, be a true one and extend to all his benefices. And if he to whom the confirmation belongs do upon a scrutiny find the elect to be deficient in any of the premisses, let him by no means give him confirmation.

[p] This is a severe reflection upon the archbishops, and which they would never have passed, if there had been any freedom of debate in these legatine councils, especially because the bishops were affected by it, all at least that came to their sees since the advancement of the present archbishops, and Boniface had now sat in the chair of Canterbury twenty-four years. These Romans ever carried it insolently toward our English prelates.

32. The unquenchable thirst of ambition chooses neither Mary's better part, nor the sedulity of Martha in ministering, but takes every bye-way to dominion, through right and wrong. We are informed, that sometimes a man in order

* [See in vol. i. A.D. 601. 1. p. 66.]

† [Qui offert sacrificium ex substantia pauperum, quasi qui victimat filium in conspectu patris sui. Ecclus. xxxiv. 24. Vulg. ed.]

to climb into a vacant church, [q]lest he should be defeated of his desire by reason of his having a plurality of benefices, resigns those benefices, or rather deposits them in the hands of him to whom the collation of them belongs, on [r]condition* that if he be not elected, he may resume them. Now to countermine this collusion by an obstacle well pleasing to God, we strictly forbid such benefices to be restored to him that so resigns them for the future, or to be granted to him *de novo;* but that they be canonically disposed of to other parsons as vacant benefices. And if they or any of them be so restored or granted again to the resigner, we decree the restitution or concession to be of none effect: let him who knowingly collates or institutes the resigner into the benefices so resigned against the premisses, if he be a bishop, be suspended from the use of his dalmatic and pontificals; if an inferior prelate, from his office till he revoke it.

[q] A pluralist was incapable of being elected to a bishopric without a dispensation from the pope, by a decree of Gregory the Ninth, *Decretal.*, lib. i. tit. 6. c. 54.

[r] Here I follow John Athon, who says some copies had *protestatione;* Sir H. Spelman has *fictione.*

33. Because when presentation is to be made to a vacant church, he that is to be presented, as we hear, very often first agrees with the patron to pay him a certain annuity out of the goods of the church, and so is presented by compact: we intending to obviate this simony and waste done to the church, do wholly [s]revoke all such promises and compacts, and forbid such to be made for the future; and decree, that if they be made, they shall be of no force. And we revoke all pensions imposed on parochial churches, unless they who receive them are warranted by lawful prescription, special privilege, or some other certain right[t].

[s] Our present lawyers allow such covenants to be valid; but in this age I conceive such causes were not permitted to be brought into temporal courts.

[t] John Athon's copy adds *ab initio* †.

34. 'The Almighty Lord, who does not forget mercy in anger, that He might be appeased by the prayers and groans

* [detestabili quadam pactione, Athon. W.] † [So Wilkins.]

of the contrite, willed temples to be built, where the faithful assembling and abstracting themselves from all outward things and retiring into their own consciences, with their senses shut, may pacify the anger of the just judge by oblations and holocausts, and especially by the sacrifices of a contrite heart, and prayers which unite us to God, that sinners may not be consumed but obtain mercy*: the Son of God hath shewed by word and deed how acceptable this is to Him as God of all, when He affirmed the church to be His own house, and willed it to be declared not a house of merchandise but of prayer, insomuch that with a scourge He drove the chapmen out of the temple, though they sold there what was necessary for sacrifice; plainly shewing the detestable sin of them who keep markets in churches, and traffic in the house of God, and[1] making it a den of thieves 'and devils†: for in their traffic they deceive or intend to deceive each other; therefore we strictly forbid any man to hold a market, or exercise any negociation in any churches of our legateship; firmly enjoining archbishops, bishops, and other prelates of churches, in virtue of holy obedience, that they cause it inviolably to be observed by all, by ecclesiastical censure.

[1] [*dele* and.]

35. The just and merciful God, who desires not the death of a sinner, but that he be converted and live, sometimes lays temporal punishments on men, that He may not eternally condemn them. Therefore, when our sins separate between God and us, He sends diseases, plagues, famines, and wars, and many other evils for the affliction of sinners. Upon this account the famous kingdom of England, which used to enjoy peace, is miserably at this time wasted with feuds, dissensions, and wars. And to the shame and grief of all Christian people, the Holy Land, in which the Son of God wrought

'* [Omnipotens Dominus, qui cum propter peccata nostra nobis irascitur non obliviscitur misereri, sciens se posse ac debere placari per contritorum et humiliatorum gemitus et orationes, templa et oratoria construi voluit, in quibus convenientes fideles, abstracti a cunctis exterioribus actibus, et seipsos, clausis corporis sensibus, in suis conscientiis colligentes, per oblationes et hostias, et præcipue per sacrificia contriti cordis et orationes, quibus Deo conjungimur, iram justi judicis mitigarent, ut, in misericordiam conversa justitia, peccatores juste non consumantur pro meritis, sed pro clementia conditoris misericordiam consequantur. Athon. W. Spelman has the same, except 'creatoris' for 'conditoris.'

'† [et domum diaboli, Athon. S. W.]

the salvation of man, [God] hath delivered into the hands of those who are enemies to the Christian name; that having shewed us that by reason of our sins we are unworthy to dwell in so holy a country, He may employ Christian people in fighting His battles to their own salvation. But whom the Lord loveth He chasteneth, and when He has been justly angry, He will remember mercy; so as after plagues and other evils, to give comfort to the afflicted, soundness to them that languish, and unity to them that are at discord: therefore the old fathers ordained with a provident deliberation, that public solemn processions should be made at certain seasons, at which the faithful being under God's visitation, and warmed with devotion and love, might provoke His mercy by their prayers, and praise Him for benefits received, to wipe off the imputation of ingratitude. In an emulous imitation hereof we ordain and charge that one public solemn procession be made every year [u]on the morrow after the octaves of Pentecost in all the countries of our legateship, in which all the faithful, both religious and secular, may thank God for the restoring of peace, pray to the Lord, that He turning away His wrath would direct the government of these kingdoms and countries, grant peace to the faithful, continue and confirm the peace already restored; and give back the Holy Land (which He dyed with His own Blood) to the worshippers of Christ, to the glory of His Name.

[u] We should call it Trinity Monday. But the festival of the Holy Trinity was not yet settled by the pope. It had been kept from the time of Pope Alexander the Third (if not before) in some churches on the Sunday after Pentecost, in others on the Sunday next before Advent, but in the Church of Rome not at all, as Pope Alexander informs us; and in the year 1305 it was made an established feast, as it stands in our present calendar, by Benedict the Thirteenth. See Alexander's *Decretal.*, lib. ii. tit. 9. c. 2.

36. The preservation of the honour of the Church produces and increases the unity and merit of the Catholic faith, procures grace and peace from the Lord to Christian people, and makes the prayers of the just full of propitiation, and worthy to be heard by our merciful Father, in proportion to that reverence they bear to holy mother Church. But from differences oppositions arise so as to divide faith and unity.

The contempt of religion pulls down the anger of the Omnipotent on a people whom He hath put out of His protection, and who have shipwrecked themselves through their own inordinate desires, and rendered the mercy of God inexorable. Therefore we call upon the archbishops and bishops who are placed by the Lord to keep watch over His flock, and charge them in virtue of holy obedience, that they be very diligent in defending the Churches and ecclesiastical persons, and in reforming of them; and employ their pastoral care for the restoration and preservation of both. And let them observe and cause to be observed the constitutions of the fathers, and of the Roman pontiffs, against them who attempt to obstruct the jurisdiction and endeavours in these respects, under the penalties expressed in these constitutions. But that the ignorance of these constitutions may not be the occasion of the neglect of them, we charge all archbishops and bishops, abbots and priors exempt*, as also the chapters of cathedral churches, that they all take a copy of the constitutions published in this council; and let the archbishops and bishops cause them to be read every year word for word in their synods†.

There are fifteen or seventeen constitutions (as they are differently divided by Sir H. Spelman and John Athon) over and above the foregoing; but I translate them not because they wholly concerned the regulars or religious; and if we may believe John Athon, were never read in open council, and indeed it is evident that the legatine constitutions end with the injunction for their publication.

* [Johnson, following Athon, *omits*, et non exemptis, S. W.]

† [*Hic desinit codex regius, h. m.* "Expliciunt constitutiones Octoboni." W. Wilkins gives seventeen more constitutions nearly as Spelman, and at the end of them quotes from MS. Lamb. the following conclusion; "acta sunt hæc London. xi. kal. Maii, A.D. 1268. Postea ipse Octobonus fuit affectus papa, cui nomen imponebatur Adrianus." See Wilkins, vol. ii. p. 15, note s, and p. 19, note f.]

## A.D. MCCLXXIX.

### PREFACE. ARCHBISHOP PECKHAM'S CONSTITUTIONS AT READING.

Friars were now in great reputation, Robert Kilwardby was one of the black sort; he succeeded Boniface in the archbishopric of Canterbury, and founded the house of Black Friars, London: upon this Robert's resignation, John Peckham, a grey or Franciscan friar, was his successor by virtue of the pope's provision, who made Kilwardby cardinal, and bishop of Porto, and then placed Peckham in his room at Canterbury. To give my reader a true view of the spirit of this prelate, I will present him with the substance of a letter which he wrote to Edward I. then king of England, viz., A.D. 1281*. "He professes obedience, and owns his great obligations to the king: but declares that he could not be bound to disobey laws which subsisted by a divine authority, by any human laws, or oaths: he observes an old rivalry between the ecclesiastical and secular powers; and speaks of the Church's being oppressed contrary to the decrees of the popes, the statutes of the councils, and the sanctions of orthodox fathers, in which three, says he, is the supreme authority, the supreme truth, the supreme sanctity, (he forgot the Holy Scriptures,) and no end can be put to disputes unless we can submit our sublimity to these three great laws: for out of these the canons (as he adds meaning the canon law) are collected. He undertakes to prove the authority of these from Matt. xvi. 19; Deut. xvii. 9—11, 18, 19; Matt. x. 20; xviii. 19, 20, and then goes on in this manner. Constantine, king of England and emperor of the world, granted all that we ask, and particularly that clerks should be judged by their prelates only. Wihtred, king of Kent, granted the

* [See the letter at length, Wilkins, vol. ii. p. 64.]

same, as is plain from the council held by Archbishop Brihtwald, A.D. 694*. This Knute declared in his laws; King Edward promised to keep the laws of Knute; and King William, to whom St. Edward gave the kingdom, granted that the same should be observed. He intimates that these oppressions began under King Henry I., but proceeded to a greater height under King Henry II. He gives the epithet damnable to the articles [of Clarendon] because Archbishop Thomas suffered banishment and death for not subscribing them. He tells the king he was awed by his conscience to write this letter, that no oath could bind against the liberties of the Church; and farther, says he, we absolve you from any oath that can any ways incite you against the Church. He begs of the king to learn this lesson, 'for which so many of the holy fathers, and the last but one [of my predecessors] the lord Boniface, our mother's uncle, did so earnestly labour†, and to which we believe you inclined unless evil counsellors deceive you. Dated from Lambeth, 4. nones of November, 1281."

If we could depend on the last clause of this letter, it would confute the common tradition concerning this archbishop, viz., that he was of obscure parentage. If Boniface were his mother's uncle, he had certainly been related to the king himself: but I conceive, that instead of *nostræ genitricis,* it should be *vestræ genitricis,* especially because he gives her the title of illustrious: and it has already been observed that Boniface was uncle to Eleanor, queen of King Henry III., King Edward's mother. But if this archbishop were of mean birth, yet he raised a family, for it is agreed that he left a very large estate to his kindred, notwithstanding the oath of poverty which he (as a friar) had taken. And yet he was one that endeavoured to have it thought, that he never forgot his order: for he ever styled himself Friar John.

* [See above, vol. i. p. 125, and Appendix, A.D. 692—4.]

† [pro qua tot sancti patres, et penultimo sanctæ memoriæ dominus Bonifacius, illustris genetricis vestræ avunculus, tam anxie laborarunt. W., p. 65.]

## A.D. MCCLXXIX.

### ARCHBISHOP PECKHAM'S CONSTITUTIONS AT READING.

LATIN. [Lynd., p. 135.] Sir H. Spelman, vol. ii. p. 320. [Lynd., app., p. 22. Wilkins, vol. ii. p. 33*.]

He called a provincial synod at Reading, and after having read the constitutions of Othobon, as that legate had enjoined, he thus descants on the twenty-ninth of those constitutions, viz.;

1. Ye have heard, my brethren, the tenor of this constitution, ye know the canons of the holy fathers published in this respect in the council of Toulouse † and Rome ‡, and the decree of Dionysius, all which forbid a plurality of benefices with cure to one man; requiring a single priest for every church, as did the Lateran council under Pope Alexander the Third, and the other general council there under Innocent the Third §. There is this addition in the last council, that the first is vacant by accepting a second, and that the first may be conferred on another by the patron; and if he do it not within six months, not only the collation of it devolves to another, but [the clerk] may be forced to assign out of his own goods for the use of the church to which the benefice belongs, as much as hath been received since the voidance thereof: next came the present constitution of Othobon, which he thought sufficient against evils past and to come; for in one case he decrees the institutions to be null *ipso jure*, in another case he lays an oath on the person to be instituted, and in case of perjury deprives him of all benefices which he had, or might have had; and suspends the bishops acting against this from collating of benefices, till they revoke

* [*Constitutiones domini Johannis Peckham Cantuar. Archiepiscopi editæ ibidem* iii. *kal. Aug. Anno Dom.* MCCLXXIX. *et regni regis Edwardi primi* vii. Ex MS. Digby Bodlej. n. 170. et Cotton. Otho. A. 15. et reg. Giffard. Wigorn. n. ii. iii. et iv. et MS. Eliens. n. 235.]

† [in Tholosano, W., "Tolletano," Wig. MS.]

‡ [quam in Remensi Concilio, W.]

§ [See above, p. 160, notes ‡, §.]

the institution made contrary to this constitution. Yet there has been no good effect of all these provisions laboured with so much zeal and diligence: for there are some who by right and wrong accumulate benefices, as if nothing of this sort had been done by those who were before us. And [the bishops] themselves, not fearing the penalties of this constitution, nor others contained in the canons, confer innumerable benefices on such as have no dispensations: all which has been often told the chief pontiff, who with the utmost abhorrence of it enjoined us with the lively oracle of his own voice to obviate this evil with a speedy reformation, and to coerce such presumers with all possible severity. And though our metropolitical power be sufficient to suppress all these evils; yet we affecting to proceed with lenity rather than rigour (though we cannot dissemble the perverseness of these doings, the mischief and scandal that attends it, and the cry that is come to the ears of our superiors of a crime that so much sullies the beauty of the Church): since the criminals are many, and example is necessary, and the authority of the apostolical precept incites us, having invoked the divine assistance which is now with us, we set our helping hand to this affair, decreeing according to the form of the [a]general council, that all those benefices with cure obtained by them *de facto*, who have no dispensation from the apostolical see for such plurality, become vacant *ipso jure* by the reception of the last benefice which they took. And though according to the rigour of the constitution of the lord Othobon, he that so receives several benefices be deprived of the [b]last too, because the institution is decreed to be null *ipso jure;* yet we taking care not to add rigour to rigour, and having an eye both to the constitution of the general council and of the lord Othobon, neither of which deprives a man both of those which he had before obtained and of the last too; (for the general council only takes away those before obtained, yet reserves the last; but the constitution of Othobon decrees the institution to the last beuefices to be *ipso jure* null, yet does [c]not *ipso jure* deprive him of one before obtained); we, mingling mercy with severity, do permit that he who has several benefices with cure, without apostolical dispensation, be content with that which he obtained last, ac-

cording to the tenor of the general council; unless he rashly contend to retain that benefice which he had before; in which case we judge him unworthy both of the first and last, or of that which he took between the one and the other, and of any at all; and that they be rather *ipso jure* vacant. And we sentence him to be perpetually deprived of all, so far as he in fact keeps them in possession. And we reserve to ourselves the collation of such benefices made void in manner aforesaid, and devolved to us by the neglect of prelates and chapters: and we especially reserve to the chief pontiff the right of collating to those benefices, which have been so long vacant by the like neglect, and are devolved to his see, as being his minister in this respect; decreeing whatever innovations made by any superior or inferior prelates, or any clergymen whatever by way of collation, exchange, or presentation in relation to the said benefices heretofore void, to be henceforth null and of none effect. And we denounce to the said detainers by ourselves, by our fellow bishops, and by their confessors; and our will is, that it be so denounced in times coming, that they may not be promoted to the dignities of the Church till they have purged themselves from this crime: as that if they be promoted they cannot without danger minister in them, nor be saved in the day of judgment, nor can they at present receive penance to their own profit, till they have renounced the benefices of which they keep possession. And let them make the satisfaction, if they can, for the fruits of the church consumed by them, since they are invaders, not pastors, robbers and deceivers of wretched souls, whom they can neither bind nor loose. We also decree those confessors, who in giving penance to such clerks do not enjoin them to restore the fruits of the injured churches, or to make satisfaction for them, to be unskilful and deceivers of the souls of such clerks. [d]And we inhibit them under pain of excommunication from extending their hands for the absolution of such clerks as are contumacious in detaining such benefices. Therefore cutting off this cancerous ulcer with the sword of anathema, we decree and confirm it with a perpetual stability, that whoever for the future shall accept or obtain several benefices with cure of souls by institution, or title of *commendam;* or one by institution, another by *commendam*

without dispensation from the apostolical see, be deprived of all benefices so obtained, and *ipso facto* excommunicated, and not receive the grace of absolution but from us or our successors, or from the apostolical see; except [they be held] in that manner, which the [e]constitution of Gregory, published in the council of Lyons, permits. And that we may have notice of benefices becoming vacant by this or any other means, we enjoin and command you, my dearest brethren, in virtue of obedience, that by yourselves, your officials, archdeacons, or deans, ye cause to be written down the names and number of churches and rectors, with their names and sirnames; so that a true account may be had of the persons, and the time of their collations, by what title they hold them, whether by institution or *commendam*, of what age the rectors who detain such churches are, in what order, whether they are beneficed in more than one church; whether they are dispensed with for plurality; who are their patrons, and what their names; of what value every church is, according to the [f]Norwich taxation: and let the bishop of every diocese transmit instruments clearly containing all these particulars to us in the city of London on the octaves of St. Hilary, at which time and place, by the favour of the most High, we shall again be assembled to His praise. And they may justly fear to be punished as falsaries, who shall commit any fraud in the account before enjoined to be given to us, either by concealing any thing necessary for our information, or by mingling any falsity with it, (which far be it from you,) or by using any artifice whereby the full truth and knowledge of the premisses may not come to us[g].

[a] Later. counc. A.D. 1216. 19. c. *de multa**. *Decretal.*, lib. iii. tit. 5. c. 28.

[b] This is to be understood of a clerk who had not only one, but two benefices at least before he took his last; for the bishop collating to the last is to enquire whether he that is to be collated have more parsonages or benefices with cure: these words do not affect him who had but one benefice before: it is Lyndwood's observation. And in truth Archbishop Peckham's constitutions are not accurately worded, though he had been auditor of causes in the pope's palace. But though Othobon's constitution makes mention of benefices (as does also *Ordinarii*, c. iii. tit. 16. lib. 1. Sext.) in the

* [Concilia, tom. xxii. col. 1005.]

plural number, yet the Lateran council does not: therefore Lyndwood is too hard on Archbishop Peckham here.

[c] Certainly, if the Lateran council under Innocent deprives the clerk of his benefices before obtained, of which there can be no doubt, so does Othobon too, for he expressly enforces the Lateran council.

[d] It is strange that Lyndwood should deny that this archbishop ever declared those excommunicated who absolved pluralists by any provincial constitution: he does expressly say that excommunication was not decreed against them in the constitution, *Beneficia vero*, immediately following *Audivistis*. Now this is the very constitution meant by Lyndwood beginning at *Beneficia vero*, but in this translation, 'And we reserve to ourselves.' For Lyndwood took this to be a distinct constitution from the foregoing, see Lyndwood, pag. 339, at the word *dudum*, and there can be no doubt but such confessors are here declared excommunicate.

[e] That is, to no one unless a priest, but one benefice, and but for six months, and upon condition it be for the good of the Church to be so holden. Council at Lyons, A.D. 1273*.

[f] In the year 1254 the pope granted three years' tenth to King Henry the Third of all the spiritualities in England, and made Walter, bishop of Norwich, taxor. This taxation was a precedent for others till 1291, when a new one was made.

[g] Look back to the last note.

2. That the constitution made in the council of Lyons may be entirely observed both as to the words and sense, the chief pontiff hath decreed, as we also decree, that benefices held *in commendam* in any other manner, or obtained under a cover of *commendam* for any longer time than the said constitution of Gregory permits; as also those that are held under pretence of custody, (which the said pope esteems not to differ from [h] *commendam*,) in another manner, or for a longer time than the said constitution allows, as also such as are collated to men under twenty-five years of age, unless they have a [i] dispensation or some lawful cause, are vacant *ipso jure*. And we reserve to ourselves, and to the archbishop's see, the collation of such benefices as are devolved to us and it, through the negligence of prelates and chapters, decreeing whatever innovations, &c., *as in the first decree, after the reservation of benefices long vacant to the see of Rome.*

[h] Therefore I have omitted the word custody in the foregoing constitution when distinguished from *commendam*.

* [Constitutiones, Greg. P. X. in conc. Lugd. II. A. D. 1274, sancitæ c. xiv. Concilia, tom. xxiv. col. 91.]

[i] Boniface VIII., in his decretal, (Sext., lib. i. tit. 6. c. 34,) complains that the constitution of Lyons which forbade men to accept a benefice while under twenty-five years of age, discouraged many from entering into orders; because in many places they had no means of subsisting themselves in the schools, but by the help of parochial or other benefices; therefore Boniface allows a subdeacon to take a benefice, and grants him seven years to qualify himself for the orders of deacon and priest, by the dispensation or permission of his superior.

3. Since an unknown evil cannot be avoided, and there are many sentences of excommunication with which wicked men are smitten in the councils of the fathers; lest through ignorance men fall into this ditch, we charge all priests of the province of Canterbury, that on the Lord's day immediately after every rural chapter, they explain to the people the following sentences of excommunication. 1. Let all be excommunicated by the authority of the [k]council of Oxford, holden by Stephen of holy memory, archbishop of Canterbury, who maliciously deprive churches of their right, and infringe or disturb their liberties contrary to justice; by which we are given to understand that all are excommunicated [l]who obtain letters from any lay-court to obstruct ecclesiastics in such causes, as by the sacred canons belong to the ecclesiastical court. 2. Let all be excommunicated who injuriously disturb the peace of our lord the king, and the kingdom, and unjustly endeavour to detain the rights of our lord the king, by which we understand not only such as raise wars, but all public robbers and highwaymen, and such as rashly oppose the justice of the kingdom. 3. All those who give false testimony, or cause it to be given, or produce such testimony to obstruct lawful marriage, or to procure any one to be disinherited. 4. All advocates who maliciously obstruct true marriage from taking effect by any objections; or who procure ecclesiastical causes to hang long in suspense in any case whatsoever contrary to justice. 5. All those who for lucre, ill will, or favour, maliciously [m]charge with crimes such as have preserved their reputation with the good and grave, that so they may be enjoined a purgation or otherwise aggrieved. 6. All those who in the vacancy of a church maliciously oppose, or cause to be opposed, the inquest concerning the right of patronage, in order to defeat

[Lynd., p. 353.]

[3. W.]

[2. W.]

the true patron of the collation, for that turn at least. 7. All who [*vide*[l]] maliciously neglect to execute the mandate of our lord the king for taking up excommunicates, or who hinder their being taken, or unjustly procure their enlargement contrary to the decree of ecclesiastical discipline. 8. All those who take any thing for obstructing peace between parties that are at law, till they restore what was taken to the giver, are excommunicated by the council of Othobon of holy memory*. 9. As are also [*vide*[l]] who take away, consume, or injuriously lay their hands on any thing that belongs to the houses, manors, granges, or other places of archbishops, bishops, or other ecclesiastical persons, contrary to the will of them, or their stewards: nor can they be absolved from this sentence till they have made competent satisfaction for the wrong. 10. They are excommunicated by him who by violence drag away one who being a criminal, flies to a church, churchyard, or cloister, or who hinder him from necessary victuals, or who carry away, or cause to be carried by violence, things belonging to other men deposited in those places; or who justify the carrying away of such things by taking it upon themselves, though done by others of their family, or who publicly or privately advised or consented to it. 11. They are excommunicated by all the archbishops, and bishops in England, who transgress the great charter of our lord the king, which sentence has often been confirmed by the apostolical see.

[k] See constitution 1. of Stephen Langton, 1222.

[l] Archbishop Peckham was obliged to revoke the first, seventh, and ninth article of these sentences, as appears by the following memorial published in Latin by Prynne, Ryley, and Brady †. "Memorandum, that the venerable father John, archbishop of Canterbury, came before the king and his council in the king's parliament at Michaelmas, in the seventh year of the king's reign, at Westminster, and did declare and grant, that of the statutes, provisions, and declarations, which were published by him at Reading, in the month of August, in the same year, among certain sentences of excommunication which the said archbishop there published, 1. That that clause in the first sentence of excommunication be blotted out and esteemed as null, which makes mention of such as obtain the king's letters to obstruct proceedings in causes, which by the sacred canons

* [See above, A.D. 1268. 27. p. 239.]

† [Prynne's Records, vol. iii. p. 235, 6. ed. London, 1668. Ryley's Pleadings in Parliament, App., p. 442. ed. Lond. 1661. Brady's Hist. of England, App., p. 33. ed. Lond. 1700.]

[belong to the ecclesiastical court.] 2. That the king's ministers be not excommunicated, though they do not obey the king's mandate in not taking up excommunicates. 3. As to such as invade the manors of clergymen, that the punishment assigned by the king be sufficient in that case. 4. That he forbid not the selling of victuals to the archbishop of York, or to any other coming to the king. 5. That *Magna Charta* be taken off from the doors of churches. He also declares and grants that no prejudice be done for the future either to the king, or to his heirs, or to his kingdom of England by means of the other articles contained in the council of Reading *.

It is evident, that at this time King Edward I. opposed not only the claims of the Church, but the liberties of England; and it is well known how hardly he was afterward brought to confirm the *Magna Charta*, and would have defeated his confirmation of it by reserves and salvos: yet he does in effect reinforce all these heads of excommunication. Const. 10, at Lambeth, 1281. And Archbishop Chichley renewed these excommunications 1434. It ought particularly to be observed, that when all the barons and great men of the king's council and parliament sided with the king against *Magna Charta*, yet Archbishop Peckham put this *Magna Charta* on the church doors, and did not consent to the pulling of it down, till he saw the council and parliament, as well as the king, averse to this his bold attempt.

[The fourth point retracted by Archbishop Peckham was the excommu- [Addenda.] nication passed by him against all those of his province who sold victuals to the archbishop of York in his journey to London to attend the king in his council or parliament. Our archbishops seem to have dropped the use of summoning him of York to councils, and of obliging him to come to Canterbury to be consecrated, and there to profess his obedience. But still, it was not allowed that the archbishop of York should have his cross borne up in state before him within this province: and while he did this, Archbishop Peckham forbid, under pain of excommunication, any people of this province to sell him victuals.]

[m] Who charge men with crimes, by which they may be defamed among the good and grave, says Lyndwood's copy.

[n] Ye have heard, dear brethren, and fellow bishops, the articles by which the sentence of excommunication is incurred *ipso facto*, by the councils of the sacred fathers; there are other articles by which bishops and prelates are *ipso facto* suspended by the same councils, sometimes from their episcopal habits, sometimes from their office, sometimes from the power of collating; and we fear lest some of you have fallen into [the censures of] these constitutions and that you have celebrated and performed your offices while under

* [Wilkins, vol. ii. p. 40. "*Revocationes provisionum Concilii Reding.* Ex rot. claus. 7 Edw. I. m. 1. dorso. Pryn. vol. iii. p. 235. seq."]

these bonds, and have incurred an irregularity in this respect. But whatever has been done by you in times past, we exhort you on God's part, and enjoin you in virtue of obedience, that for the future ye religiously observe and cause to be observed the statutes of the said councils, and our statutes published in the beginning of this promulgation; lest ye bring on yourselves the anger of God, and canonical vengeance. And lest any should be excused by ignorance, we will that this following method be observed in relation to all things that have been ordained in this congregation. Do ye, my brethren, and fellow bishops, cause all these to be published by yourselves, or by your archdeacons in your synods. And cause the constitutions of lord Othobon concerning the [o]general baptization at Easter and Pentecost, and the [p]extracts from the four councils mentioned in the beginning of our session in relation to divers articles on which the sentence of excommunication is incurred *ipso facto*, to be published in every church, great or small, on the four Sundays [q]next after the four principal chapters. But let the constitution of the lord Othobon against concubinaries be published in the four principal rural chapters, the laity being first dismissed. We charge that what has been ordained or added to the said councils by us be read twice every year in the ears of all at the two general chapters of every archdeaconry. And we command the charter of our lord the king, concerning the liberties granted to the Church, and kingdom, to be fixed up in some public place within every cathedral and collegiate church, fairly and plainly written, that it may be open to the eyes of all that come in: and let it be renewed at the end of the year, on the eve of Easter or Pentecost; that the old copy being taken away, a new one fairly written may be put in its place.

[n] This paragraph is not in Lyndwood *.

[o] See constitution of Othobon, 1, 1268.

[p] It seems plain that these words refer to something said by the archbishop at the opening of the synod, not extant in any of our present copies: the present beginning seems abrupt, and supposes all Othobon's constitutions down to the twenty-ninth to have been read before it was spoken.

[q] The last constitution but one in Lyndwood is attributed to this arch-

* [It is in Wilkins as well as Spelman and the Oxford copy.]

bishop, and is said to be a part of this constitution, and orders the general excommunication to be published on the Sunday next after Michaelmas, and Midlent Sunday, Trinity Sunday, and Sunday after Lammas, with candles lighted, &c., yet this was before Pope Benedictus's bull for observing the feast of the Holy Trinity *.

4. We think fit to explain what is provided in [r]this present constitution† concerning reserving of children to be baptized till the general baptization at Easter and Pentecost, out of our regard to that statute, which seems to have been hitherto neglected, viz., that children born within eight days before Easter, and as many before Pentecost, be reserved to be baptized at those times, if it may be done without danger; so that they receive [s]catechism between the time of their birth and their being thus perfectly baptized, and that nothing but [t]the immersion remain to be performed on the day of baptism. 'But let children born at other times of the year be baptized [u]according to the old custom, either presently as they are born or afterwards at the discretion of their parents; not only on account of the danger of sudden death, in which children are liable, but for the simplicity of their parents, who are apt to mistake in the form of baptism without taking notice of their error‡. [Lynd., p. 246.]

[r] It is evident this constitution was published immediately after reading Othoben's first constitution. Lyndwood modifies the words so as to make them serve his purpose the better; but the two other copies represent the words as here translated.

[s] That is, the *interrogatories*, dost thou renounce, believe, &c. Lyndwood adds the exorcisms and all that precedes the act of baptization.

[t] Lyndwood here prefers immersion before other modes of baptizing; but seems to suppose it sufficient that one drop of water falling[1] on the baptized from the hand of the baptizer; and that when St. Peter baptized three thousand, he sprinkled water on many of them together: and he thinks it sufficient in such a case to say once for all, "I baptize you in the name of," &c. It appears that in that age, when the child was like to die

[1] [*read* fall.]

* [Benedict XIII. was not chosen pope till A.D. 1394. See Wheatley on Common Prayer, p. 243, note 31. ed. Oxon. 1819. Compare above, A.D. 1268. 35. p. 248.]

† [in præsenti constitutione, W., in constitutione Othoboni, Lynd.]

'‡ [Alii autem, qui aliis anni temporibus nati extiterint, tum propter mortis periculum, quod sæpe pueris imminet improvisum, tum propter simplicitatem parentum, qui circa formam baptismi sint faciliter erraturi, absque ulla offensionis nota, juxta vetustam consuetudinem, vel incontinenti cum nati fuerint, vel postea prout placuerit ipsis parentibus, baptizentur. Quod si forte contigerit pueros propter mortis periculum a laicis baptizari, caveant sacerdotes, ne baptismum legitime factum audeant iterare. W. Spelman has nearly the same; Johnson's translation agrees with Lyndwood's text.]

in the birth, the head, or foot (if that first appeared) was baptized: yet Lyndwood advises, that if the child afterwards obtained a perfect birth, it should be hypothetically baptized again for greater caution. But if the foot only was baptized, the child was by this qualified to lie in holy ground, as it might not otherwise do.

[u] By the priest: this supplement seems necessary to render the last clause more intelligible.

[Lynd., p. 10.]

5. Because incontinency is a lamentable disgrace to the clergy, and a common scandal, we charge the [x]statute of the lord Othobon against concubinaries to be rigidly, inviolably observed,' and lest such should be excused by that ignorance and forgetfulness which this vice occasions, we charge all [y]archdeacons, in virtue of obedience, and under pain of suspension from office and benefice, which we pass against them in case they are wilfully negligent in this point, that they cause the said constitution distinctly and openly to be rehearsed in the four principal rural chapters every year by themselves, or their officials, or the deans, or their deputies, the laymen being first dismissed*. And our will is that the rehearsal be looked upon as a monition; that so when the sentence of deprivation, passed against them in the said constitution, is executed upon them, they may not have to plead that they have not been monished. And if any one maliciously hinder the rehearsal of the said statute, let him be under the sentence of excommunication *ipso facto*. If any [z]dean or his deputy neglect to rehearse these statutes, let him fast every Friday in bread and water (unless infirmity prevent) in virtue of obedience, till he has caused it to be rehearsed in the next chapter.

[x] See const. of Othobon, 8, 1268.

[y] Bishops, Lyndwood, but it is known that archdeacons were the presidents of the quarterly chapters, therefore I follow the two other copies.

'* [Johnson's translation agrees with Wilkins's text. The text and gloss of Lyndwood are as below,

Omnibusque et singulis coepiscopis suffraganeis nostris in virtute obedientiæ, et sub pœna suspensionis ab officio et beneficio quam in ipsos ferimus, si sponte circa hoc fuerint negligentes, firmiter injungendo mandamus, quatenus constitutionem prædictam faciant in quatuor anni principalibus capitulis ruralibus, per se vel eorum officiales, vel saltem per decanos rurales, vel gerentes eorum vices distincte et aperte coram toto capitulo exclusis laicis recitari.—Provinciale, lib. i. tit. 2. p. 10—15.

*Per se.* Si forsan præsentes sint: alias autem sufficiet, ut per suas literas fieri præcipiant, vel per nuntium, ut *in regula juris. qui sic facit per alium lib.* 6. præsertim cum non deceat statum pontificalem in singulis capitulis hujusmodi personaliter interesse. Ibid, p. 14.]

[a] The Oxford copy here adds archdeacon*, and it is probably the genuine text.

6. Whereas the consecration of the chrism is annually to be performed by the bishop of every place according to the sanctions of the sacred canons, and the chrism [a]consecrated by them annually is annually to be delivered to the faithful, and what remains of the old chrism to be burnt in the church; let the priests who preside in the churches be bound to fetch the chrism for every church every year from the bishops of the places [b]before the feast of Easter, or as soon as may be, by themselves or by their deacons or sub-deacons, so that if any one attempt to [c]baptize, or to anoint the baptized on the crown of the head, with any other chrism but the new given him by the bishop, (unless in case of imminent death,) he manifestly passes a sentence of damnation against himself; yet some through gross ignorance, which borders upon craft or a spirit of contumacy, disobeying the canons in this respect, (which is not far distant from the sin of idolatry, and witchcraft,) reserve the old chrism for two or three years, and damnably abuse it in baptism, and [d]other sacrifices, neither receiving nor asking new annually of the bishops. We strictly forbid this for the future under pain of [e]suspension, which we pass on the contumacious transgressors. [f]And the same we take to be understood in a sound sense of the holy oil of the catechumens. [Lynd., p. 36; App., p. 24-5. Wilkins, vol. ii. p. 48†.]

[a] See De Consecrat., dist. iii. c. 18, which contains a decree attributed to Pope Fabian, A.D. 420, to this purpose. Sir H. Spelman has not this and the following canons; and it seems plain that they were made in some other council of this archbishop. But since I find no certainty of the time and place, I have therefore posted them, as the Oxford copy does.

[b] The chrism is to be consecrated on Maundy Thursday: it is strange that two such solemn days as the following should be appointed for this purpose‡.

[c] Some of the chrism was to be put into the water in the baptismal font.

[d] Lyndwood owns he knows not what is here meant by other sacrifices.

[e] This must be understood, as all other penal laws, in the mildest sense, therefore I should suppose it meant of suspension from office or benefice; but Lyndwood says the least suspension is that from entrance into the

* [Not in Spelman, Wilkins, or Lyndwood.]

† ["*Statuta quædam Johannis Peckham, Cant. Archiepiscopi.* Ex MS. coll. leg. Baliol. Oxon. l. 3."]

‡ [See in vol. i. A.D. 957. 37. p. 403, n. *.]

church, which I should have judged the hardest of all; as being the punishment of laymen, and implying in effect a suspension from office.

[f] This is not the style of a legislator, especially of such an one as Archbishop Peckham, but rather the annotation of a lawyer. Lyndwood owns at the word subdeacon, that he who goes to fetch the chrism must have three bottles, one for the chrism, a second for the oil of the catechumens, (with which the party before baptism was anointed on the breast and between the shoulders,) and the oil for the sick.

[Lynd., p. 248.] 7. We charge that for the future the most worthy sacrament of the eucharist be so kept 'that a [g]tabernacle be made in every church with a decent enclosure* according to the greatness of the cure and the value of the church, in which the Lord's body may be laid, not in a purse or bag, but in a fair pyx lined with the whitest linen, so that it may be put in and taken out without any hazard of breaking it: and we charge that the venerable sacrament be renewed every Lord's day, and that priests who are negligent in keeping of the eucharist be punished according to the [h]rule of the general council; and if they persist in their negligence, more se-
[p. 249.] verely†. We decree also that this sacrament be carried with due reverence to the sick, the priest having on his surplice and stole, with a light in a lantern before him, and a bell to excite the people to due reverence, who are discreetly to be informed by the priest that they prostrate themselves, or at least make humble adoration, wheresoever the King of glory is carried [i]under the cover of bread‡. And let archdeacons be very solicitous in this point, that they may obtain remission of their sins: and let them with the rigour of discipline chastise those whom they find negligent in this respect.

[g] It seems probable that this tabernacle with its enclosure might be the same with the canopy, in which Lyndwood describes the sacrament hanging, according to the custom of England, over the altars. He expressly prefers the then practice of the Hollanders, and Portuguese, which

* [ut in qualibet ecclesia parochiali fiat tabernaculum, cum clausura decens et honestum. Lynd.]

† [Johnson's translation agrees with Lyndwood's text except as already noted; the following is Wilkins's text.

Dignissimum eucharistiæ sacramentum præcipimus de cætero taliter custodiri, ut videlicet in bursa vel loculo propter comminutionis periculum nullatenus collocetur, sed in pixide pulcherrima intrinsecus lino candidissimo adornata, in qua ipsum corpus Domini repositum in aliquo cooperticulo de serico, purpura vel lino purissimo operiri præcipimus, ita quod sine omni comminutionis periculo possit inde faciliter extrahi et apponi; quod etiam sacramentum in omni quindena, ne putrescat species, innovetur.]

‡ [sub panis latibulo, Lynd. W.]

was to lock it up in some close place in the wall near the altar. He owns one advantage in the English fashion, that it was the more visible and exposed to adoration. Every sober Christian for that reason would wish it in some more private less conspicuous place, for the prevention of idolatry: his other reason is good, viz., that by hanging as it did, it was in greater danger of falling, or being thrown down, or taken away by any profane chance-comer.

[h] That is, by suspension from office for three months. See Later. council, 1216, c. 20*. It adds, that they shall be more grievously punished if profanation happen through their neglect.

[i] By this one would think that the constitutor allowed that the substance of bread remained: but it is certain he very often expresses himself in an unaccurate manner, as the reader will observe in the translation, which is not less exact than the original.

8. We know that praying for the dead is holy and wholesome, especially for those who watch that they may give account of other men, to which others therefore are more strongly bound in gratitude: therefore we ordain that when any bishop of the province of Canterbury dies, his surviving brethren perform a [k] solemn office of the dead, not only in their own chapels singly, but when they are assembled after the decease of any bishop or bishops in council or otherwise for the service of the Church [l] jointly. 'Farther we charge, and in virtue of obedience enjoin every priest as well secular as regular, that when they have certain information of the death of their diocesan they say every one a mass for the expiation of his sins†. Farther we entreat all exempt religious priests, and seculars too, if there be any such, that they freely comply with this ordinance, (saving the privileges of their exemption in other respects,) or at least do by their own authority ordain it to be observed. They are to know that we will thank them for their good will, and shall lament to find them otherwise disposed. [m] Let them inform us in our next congregation what they resolve to do in this matter‡. [Lynd., p. 230.]

* [Concil., tom. xxii. col. 1007.]

'† [præcipientes insuper, et in virtute obedientiæ firmiter injungendo, ut singuli sacerdotes tam seculares quam regulares missas dicant singulas, cum a diœcesano eis fuerit veritas intimata pro ipsius anima a peccati maculis expianda, et si quis hujus ordinationis per mensem contemptor extiterit, ipsum extunc a celebratione suspendimus divinorum, W. Johnson's translation agrees with Lyndwood's text. Comp. in vol. i. A.D. 816. 10. p. 306.]

‡ [Quid autem super hoc facere decreverint exempti, nobis in congregatione nostra futura proxima studeant nunciare, W. Johnson inserted the sentence from Lynd. app., p. 25.]

[k] With singing, Lyndwood.

[l] I should understand this of what Morinus calls concelebration of masses, (*de Ordinat.*, pars iii. p. 126*,) that is, the whole council or college of bishops joining in pronouncing all the words of the service, or the bishop and his priests in the diocesan synod saying or singing mass in the same manner. However it is certain this method was used in some churches if not in this. The bishop and his priests used thus to celebrate together in the cathedral on the most solemn feasts. And this explains the canons of those churches which forbid Christmas, Easter, &c., to be celebrated in villages. For on these occasions the people that were able, as well as priests, went to the cathedral, or to some collegiate church.

[m] Lyndwood omits this.

[Lynd., p. 336.] 9. Since it is wholesomely ordained that prelates in granting indulgences do not exceed forty days, lest the keys of the Church be despised: let others who are commissioned to [n]dispense this mystical treasure beware lest they disgrace those prelates by whose favour they obtain those multiplications of indulgences, by pouring them out in their preachings beyond the [intentions of those] prelates; that they who ought to be subject to the keys do not bring them into contempt†.

[n] By c. 62 of the Lateran council, 1216‡, which is, I conceive, here meant, one or more bishops may grant a year's indulgence toward the erecting of a church, forty days' to encourage the observation of the anniversary of the dedication. These indulgences themselves, and especially the abuse of them by the friars, were not only groundless and abominable, but perfectly ridiculous. Archbishop Peckham, who had been a friar, and therefore probably employed in publishing and raising money by them, was conscious of the foulness of this practice, and saw occasion to say that "the keys of the Church were by this means brought into contempt." Yet it pleased Divine Providence to permit them to go on in their impious frauds, till Martin Luther above two hundred years after began a reformation by displaying the vileness of this invention. The council of Trent was ashamed of the gross trade, and laid aside the preaching of these indulgences. And the things themselves are now little valued even by the papists themselves.

* [Commentarius de sacris Ecclesiæ ordinationibus, auct. Joanne Morino. Pars iii. Exercit. viii. c. 1. p. 124, &c. Antw. 1685.]

† [Item cum salubriter sit statutum ut prælati in indulgentiis conferendis xl. dierum numerum non excedant, ne claves ecclesiæ contemnantur, quibus tamen thesaurus institutus committitur dispensandus; caveant alii quicunque ne per multiplicatas indulgentias a prælatorum gratia sibi quæsitas dedecus faciant prælatis ecclesiæ super ipsos in suis prædicationibus indulgentias offendendo, ne qui claves habeant subjici eas faciant vilipendio. W.

The concluding words in Lynd. and Lynd. app. stand thus:
— effundendo, ne qui clavibus habeant subjici, eas faciant vilipendi.]

‡ [Concilia, tom. xxii. col. 1049, 1051.]

10. Let not clerks that are in prison for their crimes, and afterwards delivered to the Church as convicts, be easily enlarged, or admitted to purgation upon too slight pretences; [Lynd., p. 313.] °but with all ᵖsolemnity of the law, and with such provident deliberation as that it may not offend the king's majesty, or any that have a regard to equity*.

° It is from this and other evidences very clear that clerks convicted by the temporal courts were not taken to be convicted in the ecclesiastical court, but might have another trial before the ordinary: and it is evident by what Lyndwood here speaks at large, that canonists expected the secular judge should always credit the ecclesiastical court, but that the ecclesiastical court was not bound to credit the secular, unless it were for the advantage of the Church. This was very hard: and the reverse of it is now put upon them.

ᵖ That is, by giving public notice of it beforehand, Lyndwood.

11. For the mercies of Christ Jesus let care be taken that friars and nuns rigidly preserve their chastity, by punishing all that solicit or actually corrupt it; and by restraining them from making too long stays in the houses of their parents or friends. 'And we forbid ecclesiastic men and secular women to dwell with them in their houses†.

12. Observing that what grows upon sacred places is sacred, and that laymen have no power by law to dispose of sacred ecclesiastical things, but are under a necessity of obedience; being supported with the ᵠauthority of the sacred canons, we forbid all parishioners of our province to dispose of the grass, trees, or roots growing in consecrated churchyards or any other holy places. But let the said trees, as they ought, be at the disposal of the rectors of the said churches or chapels to whom the disposal of the churches and the obventions thereof are granted. 'And if the said rectors do without sufficient reasonable cause ʳspoil or grub up the said trees, which are an ornament to the church- [Wilkins, vol. ii. p. 49.]

* [The next paragraph is before this in Wilkins, where this is followed by 'Item præcipimus, ut in proxima congregatione nostra,' as in Johnson's concluding paragraph, and then by a long passage including Johnson's twelfth constitution, and entitled, 'De ornamentis ecclesiæ ad parochianos pertinentibus, et de arboribus crescentibus in cœmeterio:' the first part of the last mentioned constitution in Wilkins is the same as that given below, p. 302, and on the same subject as that of Archbishop Gray, A.D. 1251, 1. Compare A.D. 1305, 4.]

'† [This last sentence which Johnson translates as in Lynd. app. (p. 25,) is not in Wilkins, (vol. ii. p. 48,) but instead of it the words, "inhibendo monasteriis ꝛecularium fœminarum."]

yards and places thereabouts*, let them know that they shall be punished by us and our successors as violators of the rights and liberties of the Church, according to the quality of the fact.

[q] He means all those canons which forbid one man to invade what belongs to another, and laymen to deprive the Church of her rights. N.B. We have this constitution only in the Oxford copy, and then it follows after the conclusion of the council. I took the liberty to place it here.

[r] Lat. *deturpaverint.* I am apt to think it was originally *destirpaverint*, which, as opposed to *extirpaverint*, may signify to fell or cut down. For canonists, as well as other lawyers, have words of their own making.

And we charge that at our next congregation at the time of the next parliament, three weeks after Michaelmas now (by God's grace) coming, besides the persons of the bishops, and the proxies of such as may be absent, two at least elected by the clergy of every bishopric do come with sufficient authority to treat with us concerning such things as may be for the common interest of the Church of England, if a proposal should be made concerning a [s]contribution or expense†.

[s] I read *contributione*, not *conturb*———

It is asserted by some that are well versed in manuscripts that this last paragraph is in none of the ancient copies; and that the parochial clergy were not yet called to parochial‡ synods: and it has been conjectured that this paragraph was a resolve of the state convocation held at Northampton, 1283, with regard to their next assembly at the Temple, London.

The following constitution having been made at the same time and place, I here insert as translated from the copy published by the very accurate hand of his grace the

* [Quibus si abusi fuerint dicti rectores, et arbores in hujusmodi crescentes cœmeteriis (quæ quidem arbores cœmeteria ipsa et loca juxta ecclesias et capellas, ubi plantatæ fuerint, non modicum condecorant) absque sufficienti et rationabili causa evulserint, deturpaverint, seu radicitus extirpaverint. Wilkins, vol. ii. p. 49.]

† [Item præcipimus, ut in proxima congregatione nostra tempore parliamenti proximi post festum S. Michaelis ad tres hebdomadas per Dei gratiam futura, præter personas episcoporum et procuratores absentium, veniant duo aut unus a clero episcopatuum singulorum qui auctoritatem habeant una nobiscum tractare de his, quæ ecclesiæ et communi utilitati expediunt Anglicanæ, etiamsi de contributione aliqua vel expensis oportet fieri mentionem, etc. Wilkins, vol. ii. p. 49.]

‡ [This word is altered by MS. note Wrangham to 'provincial,' which the context seems to require, but a provincial assembly was properly a council, and a synod meant an assembly of the diocese or parish, as the bishop's district was anciently called. See Lyndwood, Provinciale, lib. ii. tit. 7. p. 115. gl. *In Concilio.—Concilio.—Statutum.* quoted below, A.D. 1328. 6.]

present lord archbishop of Canterbury, in Append. to the State of the Church, p. 12 *.

### *A protection of the liberties of the scholars at Oxford by the archbishop of Canterbury.*

13. Friar John, by divine miseration archbishop of Canterbury, primate of all England, to his beloved in Christ the chancellor and university of masters and scholars at Oxford, in the diocese of Lincoln, health, grace, and benediction. We shew all possible favour to them who are seeking the pearl of knowledge in the field of scholastic discipline, and willingly grant them what may advance their tranquillity by taking away the occasion of their grievances. Therefore moved by your devout prayers we receive under our protection your persons, together with all the goods belonging to you all, which you at present do by fair means possess, or which ye shall hereafter by God's help justly get. But especially we, with the unanimous express consent of our brethren, do by the authority of these presents, and by the patronage of this present writing, confirm to you and to your successors by you, the liberties and immunities duly granted you by bishops, kings, great men, and other faithful people of Christ, according as ye do now justly and fairly enjoy them. Farther, because we are given to understand that some men, regardless of their own salvation, when they have been laid under a sentence of suspension or excommunication for their offences committed in the university of Oxford, by the chancellor of the university, or by inferior judges deputed by him, ' or by the said chancellor together with the whole university of regents only, and sometimes both of regents and non-regents ‡, they withdraw from you and your jurisdiction in contempt of the keys of the Church; now to the intent that [the said sentences] may have their full force and strength, we, with the express unanimous consent of our [Wilkins, vol. ii. p. 39 †.]

* [The State of the Church and Clergy of England in their Councils, &c., with a large appendix of original writs and other instruments, by William Wake, D.D., A.D. 1703.]

† ["*Quædam tuitio libertatum scholarium Oxon. per Archiepisc. Cant. promulgata in Concilio Redingensi.* Ex reg. Giffard, Wigorn. fol. 92, 93."]

' ‡ [vel per ipsum cancellarium una cum tota universitate, quandoque solorum regentium et non regentium, W.]

brethren, do grant to you by the tenor of these presents, that [the said sentences] be put in full execution within our province by ourselves, our brethren, and their officials, as often as we or our brethren are lawfully required by you in this respect. And being willing further to make a more plentiful provision for your tranquillity, that your community for the future may be conducted in prosperity and peace, we grant to you, and with the express unanimous consent of our brethren we ordain and enact, that if any clerks beneficed in our province be found in arms by night or by day to the disturbance of [your] peace, or by any other means interrupting the tranquillity of the university, and are lawfully and duly convicted hereof, or do presumptively confess it by their running away, that their benefices be sequestered in the hands of their prelates for three years upon an information made to the bishops by the chancellor under the common seal of the university; and that lawful satisfaction be made to him or them that have been hurt by the party so convicted, confessing, or running away, out of the fruits of such benefices in the meantime to be received. But if they are unbeneficed, let them for five years be esteemed uncapable of accepting any ecclesiastical benefice, unless in the meantime they make competent satisfaction to them whom they have hurt, and have by merit recovered the grace of the university with a saving to their reputation after satisfaction made. In testimony of all which our seal, together with the seals of our brethren here present, is appendent to this writing. Dated in our council at Reading the day before the calends of August, in the year of grace 1279.

*Cantuar., Lincoln., Sarum, Winton., Exon., Cicestern., Wygorn., Bathon., Landaven., Herefordens., Norwycen., Bangoren., Roffens.**

* [This memorandum of subscribing or consenting parties is in Archbishop Wake's State of the Church, App., p. 13, but not in Wilkins.]

## A.D. MCCLXXXI.

### ARCHBISHOP PECKHAM'S CONSTITUTIONS AT LAMBETH.

LATIN. Sir H. Spelman, vol. ii. p. 328. [Lynd., App., p. 26. Wilkins, vol. ii. p. 51*.]

HERE begin the constitutions of Friar John Peckham, archbishop of Canterbury, published at Lambeth A.D. 1281, in the ninth year of the reign of King Edward the First, Martin the Second, alias the Fourth, being chief pontiff.

The orthodox fathers from the very infancy of the Church have encountered errors, corruptions, and calamities by conciliary treaties, where wise and holy men give an edge to each other, and get the mind of Christ, who is in the midst of them when so assembled: therefore following the holy fathers, and driven by the authority of the law, and the necessity of the Church, we, Friar John, by divine permission archbishop of Canterbury, primate of all England, have commanded this holy council to be called, hoping to remedy the present inconveniencies by the effectual assistance of our brethren the bishops, and other the prelates of our province, under the protection of the grace of Christ. We intend by the preventing grace of the Spirit, by our consultations and endeavours, to correct some transgressors of the canons; to re-establish some things that have formerly been published for the curing our evils, and yet not been so approved as to be put in practice; to obviate some innovations, or rather transgressions, now exhaling from the infernal pit. And in these points we fear not the teeth of detraction; for though the most perfect laws of God have certain limits; yet necessity will allow no bounds to be set to human law; therefore both testaments teach the contempt of law and canons to be monstrously criminal: for

* ["*Constitutiones Johannis Peckham Archiepiscopi Cantuariensis editæ in concilio Lambethensi, A.D.* MCCLXXXI. *et regni regis Edwardi primi* ix. Ex MS. Cotton. Otho. A 15. collat. cum MS. Lambeth. n. 17. et Elien. n. 235. et MS. Oxon Mariæ Mag. colleg. n. 185." Wilkins remarks that the proem is not in the Oxford MS.]

such as resist the apostolical decrees and the definitions of councils, the sword of Moses strikes with a capital punishment; and Wisdom incarnate has decreed that those who hear not the Church be as heathens and publicans, and that the contempt of apostolical authority redounds to the contempt of Him that is Father of all. For they whom Peter binds with his laws are bound in the imperial heavenly palace. Yet we find some, both clerks and laymen, who boast themselves Christians, do cast away the yoke of the canons, trample upon apostolical sanctions, forgetting that glorious martyr Thomas our patriarch, who in defence of these laws suffered banishment and death.

By the authority of the [a]Lateran council we will cause the canons to be rehearsed. And we will cause the [b]council of Lyons to be recited in the first place, as being the last of all; and therefore the violation of it the more enormous; not only that it may be notified to all, that no man's ignorance may be his excuse; but that the apostolical clemency may be implored for the moderating of whatever may seem inconsistent with the custom of this country, which differs in many points from all others, "for obedience is better than sacrifice;" and we believe disobedience to be the cause of this miserable catastrophe in the Church of England. Secondly, we will cause the constitutions of lord Othobon of holy memory (afterwards advanced to the apostolical dignity*) to be read, and that with the greater reverence, on the account of his having commanded this to be done yearly, word for word, by the archbishops and bishops in their synods. Thirdly, we will cause the council of Lambeth, which our predecessor Boniface of holy memory, with the archbishops and bishops of his time, is known to have published, to be read, that it may be considered how we ought to proceed in relation to that which is said to have been suspended by an appeal. Lastly, we will add what seems necessary to be ordained by us.

[1 Sam. xv. 22.]

[a] By c. 6. of the Lat. council, 1216†. The canons especially of that council are ordered to be read in every provincial synod: but it does not appear that they were read here.

[b] There were two councils held at Lyons in this century, and both styled

* [The words in a parenthesis are not in Wilkins, but see above, p. 249, note †.]

† [Concilia, tom. xxii. col. 991.]

general, the first in 1245*, the other 1274†. I suppose the last is here meant.

1. The most High hath created a medicine for the body of man (which was taken out of the earth) reposited in seven vessels, that is, in the seven sacraments of the Church, which are handled and dispensed with little reverence and diligence, as our own eyes inform us. Here then let us begin our correction, and especially in the sacrament of our Lord's body, which is a sacrament and a sacrifice of a sacrament, sanctifying those who eat it; and a sacrifice, which by its oblation is profitable for all in whose behalf it is made, as well the living as the dead. By daily scandals we find that there are many priests of the Lord in number, few in merit. We chiefly lament this among their damnable neglects, that they are irreverent in respect to this sacrament; that they consecrate it with accursed tongues, reposit, and keep it with contempt; and neglect to change it so long that the containing species is corrupted; so that the Author of our salvation, who gave Himself for a *viaticum* to His Church, is justly offended with such irreverence; we ordain as a remedy to this mischief, that every priest that hath not a canonical excuse, [Lynd., p. 231.] 'do consecrate once every week at least, and that a tabernacle, *&c., as in the seventh of this archbishop's constitutions at Reading, to the word* "Lord's day‡." [c]Let the bells be tolled at the elevation of the Body of Christ, that the people who have not leisure daily to be present at mass, may wherever they are, in houses, or fields, bow their knees in order to the having the indulgences granted by many bishops. 'And let priests who are negligent in keeping the eucharist, *&c., as in constitution the seventh at Reading to the end*§. [d]Let priests [p. 8.]

* [Concilia, tom. xxiii. col. 605, seq.]

† [Ibid., tom. xxiv. col. 37, seq.]

'‡ [confiteatur omni hebdomada saltem semel; et ut in qualibet ecclesia parochiali fiat tabernaculum cum clausura decens ut honestum, secundum curæ magnitudinem, et ecclesiæ facultates, in quo ipsum corpus Domini in pyxide pulcherrima, et lineis tegumentis, sed nullatenus in loculo propter comminutionis devitandum periculum collocetur; quod in omni dominica præcipimus renovari. W. In the first word Johnson translates 'conficiat,' the reading of Lynd. app., which is preferred to 'confiteatur' by Lyndwood, Provinciale, lib. iii. tit. 23. p. 232. gl. *Conficiat.*]

'§ [Sacerdotes autem in custodia eucharistiæ negligentes puniri præcipimus secundum regulam concilii generalis capitulo "statuimus" et gravius si in negligentia perseverent. Circa deportationem vero ipsius eucharistiæ ad ægros servetur honestas alias et alibi constituta. W.]

also take care when they give the holy communion at Easter, or at any other time, to the simple, diligently to instruct them that the Body and Blood of our Lord is given to them at once under the species of bread; nay, the whole living and true Christ, who is entirely under the species of the sacrament. And let them at the same time [e]instruct them, that what at the same time is given them to drink is [f]not the sacrament, but mere wine to be drunk for the more easy swallowing of the sacrament which they have taken. For it is allowed in such [g]small churches to none but them that celebrate to receive the Blood under the species of consecrated wine. Let them also direct them not overmuch to grind the sacrament with their teeth, but to swallow it entirely after they have a little chewed it; lest it happen that some small particle stick between their teeth, or some where else. Let parish priests beware that they give not the Body of the Lord to any that have not evidence of their having confessed by testimonial, or other credible assurance: and we lay the stress of the proof upon the [h]oath of him that is to receive [the sacrament] *, who is to take care of what concerns his salvation. [i]Let no priest give the communion to the parishioner of another priest without his manifest licence. We extend not this ordinance to travellers, or persons in danger, or in case of necessity.

[Lynd., p. 232.]

[e] Now the doctrine of transubstantiation was brought to its perfect height, and the practice consequent upon it established.

[d] The reader is not to surmise that these constitutions being in both these councils are therefore interpolated in one of them. It seems plain that Archbishop Peckham inserted them in both, as appears from his manner of reinforcing the last part of the seventh canon at Reading in this council at Lambeth, which is thus, "as to the carrying the eucharist to the sick, let that decency be observed which was ordained at another time and place."

[e] This was frank and fair. I am informed that the Romish priests in England did no longer ago than the reigns of King Charles and James the Second, continue this practice of giving unconsecrated wine to the people, without cautioning them in the manner here prescribed, and that an old woman of that communion did swear that a priest of the Romish Church, then dead, did always administer the cup as well as the host to the people:

* Et hujusmodi certificationis onus ipsius susceptoris imponimus sacramento, Lynd. MS. O. et hujus certificationis onus ipsi suscepturo imponimus sacramentum, W.

whereupon the plaintiff, who sued for an estate in lands given him by deed by the said popish priest carried his cause at the assizes in Kent. For the judge and jury agreed, that if he did give the cup, he could not be a popish priest, and might therefore inherit and dispose of lands; but at another trial at the same place it was made appear that the cup given by the said priest contained only unconsecrated wine, and that it was the usual practice of such priests here to give an unconsecrated draught to the people, and so the estate went to the heir at law.

[f] What is the reason, says Lyndwood, that the laity have the sacrament but in one kind? He answers, 1. Because otherwise they might believe, that the whole Christ was not contained under one species. 2. Lest the blood should be spilt. 3. Because under the law the people that offered did not partake of the drink offering. (No, nor yet the priests, say the Rabbies, and all who believe the drink offering to have been wholly poured out on the altar.) 4. Because it would not be decent to consecrate so much wine as would be necessary in some parishes, where there are many thousands of people, nor could a vessel sufficiently large be found, or placed on the altar*. These are the best reasons that Bishop Lyndwood could invent to excuse so gross a sacrilege.

[g] Therefore, as Lyndwood observes, in greater churches it might be allowed; yet only to the assisting priests in cathedral and other great churches where such a custom is, and if they have in the cup a sufficient quantity. However, I think it evident that the cup was not yet wholly and absolutely denied the laity in Archbishop Peckham's days, though it was in Lyndwood's; however, it was not wholly denied to the assisting priests, as has been for several ages past†.

[h] Their affirmation is sufficient, says Lyndwood‡.

[i] This constitution is of little force, says Lyndwood, for want of a penalty.

2. Let all priests beware that they do not so oblige themselves to celebrate peculiar masses for families, as to disable themselves from discharging their canonical office in the church committed to them; nor undertake to celebrate [k]annals for the dead, except they can celebrate daily, or procure others to do it; nor undertake more annals than they have priests to assist them; unless he who procures these devotions for the dead do expressly consent that the memory of his deceased friend may be joined with others in the same mass. And let not the celebrating priest think [Lynd., p. 228.]

* [Provinciale, lib. i. tit. 1. p. 9. gl. *Vinum purum.*]

† [See Lyndwood's important statements at length, ibid., p. 9, 10, gl. *Minoribus ecclesiis—Est concessum.*]

‡ [*Sacramento*, i. e. juramento .... Credendum est nudæ assertioni dicentis se esse confessum. Sed hoc quod hic dicitur intellige quando sacerdos habet eum probabiliter suspectum; quo casu potest ab eo exigere juramentum. Lyndwood, gl. lib. iii. tit. 23. p. 233.]

that by saying one mass he does what is sufficient for two, in behalf of whom he promised entirely to celebrate; for though the [l]canon say that "not less [benefit] is received when a mass is said for many, than if it were said for every one singly," this is to be understood of masses said with a reluctancy of mind*: and far be it from any catholic to say that one mass is as effectual for a thousand men, as a thousand masses said with equal devotion: for though Christ, as a sacrifice, is of infinite virtue, yet He does not operate in the sacrament, or sacrifice, according to His immense plenitude; for then but one mass need be said for one man. He operates in these mysteries by a certain distribution of His plenitude, annexed to them by an ineffable[1] law. And we monish them who have accepted of stipends for celebrating annals, or [m]anniversaries, and yet through malice, or carelessness, do not perform their obligations, that they make full satisfaction for their omissions; and give to the poor such profits as they have received in behalf of those souls, and if they wilfully neglect both the one and the other, [n]let them be sharply corrected by their ordinaries, as deceivers of the faithful.

[1] [ineffabili, Lynd., infallibili, W.]

[k] Daily masses for the dead throughout one whole year.

[l] That is, *de Consecratione*. Dist. 5. c. 24. It is a citation from a book falsely ascribed to St. Jerome *de Regul. Monach.*

[m] Lyndwood expressly says, they are the same with annals†.

[n] Lyndwood says, the money received for this purpose could not be demanded again, unless there was an express contract to this effect.

[Lynd., p. 244.] 3. We find some have transgressed as to the sacrament of Baptism. For whereas it is allowed to laymen or women to baptize children in case of inevitable necessity, and such Baptism is evidently sufficient to salvation, if the due form be observed; and they who have been so baptized, ought not

* [Licet enim dicat "de con. di. V., non mediocriter" capitulum, quod nihil minus accipitur cum missa una pro cunctis dicitur, quam si pro unoquoque eorum una diceretur; loquitur tantum de his missis, quæ anxiato corde dicuntur.

MS. L. et E, *addit:* sc. quod minus valet una missa cum hilaritate orantis dicta pro uno, quam si pro quolibet diceretur cum anxietate. *H. glo. de consecr. di. V. ut. pro cunctis.* Absit. Wilkins, vol. ii. p. 52. note b.

Lyndwood's text nearly agrees with that of Wilkins first given, but has "cum missa pro defunctis pluribus una dicitur, quam si pro uno quolibet ipsorum diceretur." Cf. Provinciale, p. 229.]

† [Cf. Provinciale, p. 228, gl. *Annalia.* p. 230, gl. *Annalibus—Anniversariis.*]

to be baptized again; and yet some foolish priests do rebaptize them, which is an indignity to the sacrament; now we firmly forbid this for the future. But let the exorcisms and catechisms be used over children so baptized, in reverence to the ordinances of the Church. But the form of the sacrament in the vulgar tongue consists not only in the signs, but in the series of the words in which it was instituted by God; inasmuch as Christ the Lord hath conferred a regenerative power to those words so ranged as they are in the Latin tongue: let then the baptizers say thus, °I christen thee in the name of the Father, and of the Son, and of the Holy Ghost*. And if the priest doubt whether the child was baptized in due form, let him observe the manner in the ᵖdecretal, together with the exorcisms and catechism, saying, "If thou art baptized, I do not rebaptize† thee, if thou art not baptized, I baptize thee in the name of," &c. Let priests take care that names which carry a lascivious sound be not given to children at their baptism, especially to those of the female sex; if they be, let them be altered by the bishops at ᵍconfirmation.

° In Sir H. Spelman's copy, which seems to be the older English, it goes thus, Ich Christine the in the faders name, with an &c., and it is much the same in the Oxford copy.

ᵖ Lib. iii. tit. 42. c. 2. It is a decretal of Alex. III. A.D. 1175.

ᵍ Of old the bishop at confirmation pronounced the name of every child or person confirmed by him, and if he did not approve of the name, or the person himself or his friends desired it to be altered, it might be done by the bishop's pronouncing a new name upon his ministering this rite, and the common law allowed of the alteration. But upon the review of the liturgy at King Charles's restoration the office of Confirmation is altered as to this point. For now the bishop does not pronounce the name of the person confirmed, and therefore cannot alter it.

4. Many neglect the sacrament of confirmation for want [Lynd., p. 40.]

* [Dicitur ergo sic a taliter baptizantibus; (Dicatur ergo a sic baptizantibus, Lynd.) "Ich[1] cristin the in the faderes name," &c., vel aliter in lingua materna secundum patriæ consuetudinem. Vel in Gallico sic; "Je [2]baptize tey en noun del peere," &c. W.

[1] y crysten the in the name of the fadyr, and the sone, and the holy goost. MSS. L. E.

[2] jeo vous baptize ou noun del pere, &c. MS. O.

In the text of Lyndwood, Oxon. A.D. 1679, the English and French versions of the formula seem to have been corrected according to the spelling usual at the time of that edition, though in the appendix (p. 27) the older forms are given.]

† [non rebaptizo, Lynd., but Wilkins has 'non baptizo,' as in Decretal., lib. ii. tit. 42. c. 2.]

of watchful advisers; 'so that there are many, innumerable many, who want the grace of confirmation, though grown old in evil days. To cure this damnable neglect, we ordain that none be admitted to the Sacrament of the Lord's Body and Blood that is not confirmed, except at the point of death, unless he have a reasonable impediment.

[Lynd., p. 309.] 5. Whereas according to theological* doctors the clerical army is fortified with seven orders, by every one of which a character is impressed on the soul, and an increase of grace is received, unless the ordained dissemble or are involved in some crime; it is expedient that no man have orders [r]inculcated on him, because the inculcation lessens the reverence, and by consequence the grace which bounds back from graceless men. It is therefore contrary to the dignity of the most reverend sacrament to confer [s]five orders to one man at once, that is, four unsacred, one sacred: therefore in some provinces the four lesser orders are not easily given to one man in the same day; that so clerks while they are advancing toward the mysteries of Christ may sing together the [t]song of degrees, when having found approbation in lower offices, they gradually proceed to higher. Because therefore we ought to make collections of what is best in every church for English souls, we charge that bishops in these respects follow the canonical sanctions; 'and let the lesser orders also be given at several times, when it can well be done, out of reverence to the sacrament. And let such as receive them singly or conjointly† be publicly instructed in the vulgar tongue, concerning the distinction of orders, offices and characters, and of the increase of grace in every order to such as are worthy receivers.

* [Catholicos, W. theologos, MSS. L.E. So Lyndwood adding in his gloss, *Theologos.* Quasi omnes. Provinciale, lib. v. tit. 11. p. 309.]

'† [Minores etiam ordines, quando id potest fieri, bono modo, pro sacramenti reverentia seu necessitate dentur saltem aliquoties combinati, et recipientes eos, seu simul, seu sigillatim, Lyndwood, text and appendix,' S. W.

Among other glosses Lyndwood adds the following;

*Bono modo*, i. e. Absque scandalo.

*Reverentia.* Quæ tunc habetur, quando sigillatim recipiuntur.

*Combinati.* Scilicet duo una vice, et postea duo alia vice. Sed hoc quod hic dicitur non est de necessitate, sed potius de honestate.

*Simul.* Ex hac litera patet, quod statuens non intendebat prohibere per hanc constitutionem, quin omnes minores ordines possent uni personæ eodem die conferri. Provinciale, lib. v. tit. 11. p. 310. Cf. ibid. *Canonicas sanctiones.*]

[r] That is, multiplied, or given in too great numbers at once.

[s] Ostiary, lector, exorcist, acolyth, are those of the inferior orders; subdeacon, deacon, priest, are the holy or superior orders*. The psalmist was of no order, but was shaved in order to be ordained, and was a clerk in a large sense. *Morin. de Ordin.* has a particular chapter against this innovation†. The bishop was by the school divines deemed to be of the same order with the priest, though he was above him in office or jurisdiction. But the canonists scarce allowed of this, but affirmed the order of bishops and priests to be distinct.

[t] Fifteen psalms, beginning at the hundred and twentieth, but the allusion seems not very apt.

6. The sacrament of penance, which is a singular remedy for such as have been cast away, loses its effects through the ignorance of some priests, and they who were thought to be safe landed are but sunk deeper in the abyss of damnation, while they absolve those whom by law they cannot absolve, and so according to the prophet, "save the souls alive who should not live, for a handful of barley and a piece of bread:" they absolve *de facto* such as are excommunicate *de jure*, and particularly by the [u]council of Oxford for hurting or disturbing ecclesiastical liberty, or such like crimes, or for withholding tithes or other ecclesiastical dues; we, opposing such seducers of souls who "sew pillows under the elbows of the wicked," strictly forbid all confessors subject to us, and our fellow bishops of the province of Canterbury, to stretch out their hands for the future to absolve these seducers‡ (which is of no force without due satisfaction made, and without a special commission from the archbishop or bishop) while they are obstinate in their crimes. 'For we judge such men to be [x]confessors of the devil's ditches rather than confessors, and that they sin very grievously§, for they are guilty of consenting, tacitly at least, to their crimes, and of confirming the villains in their perfidiousness: and let them take care lest they be involved in the same sentence of excommunication. Farther, whereas we some time since, intending to restrain plurality of benefices so sacrilegiously prac-

[Lynd., p. 337.]

[Ezek. xiii. 19.]

[v. 18.]

* [See in vol. i. Elfric's canons, A.D. 957. 10—18.]

† [See rather, Hallier de Ordin., p. 378. ed. Par. 1636.]

‡ [ad seducendos hujusmodi, Lynd. W. *Hujusmodi.* Sc. Excommunicatos. Lynd. gl., p. 338.]

§ [existimantes nihilominus hujusmodi non tam confessores, quam fovearum diabolicarum confossores, peccare gravissime, W. So Spelman and Lynd. app., except 'diaboli' for 'diabolicarum.']

tised, forbad under pain of excommunication any man to [y]extend his hands for the absolving *de facto* of such as were contumacious in their thefts and sacrileges; and yet some priests of Baal rather than of the Lord have presumed to do it, and so slay souls redeemed with the Blood of Christ, and subvert ecclesiastical discipline; we, esteeming them as foxes who destroy the vineyard of the Lord, do again charge them under the former penalty, that for the future they abstain from absolving such as these; and that they earnestly persuade them to renounce the benefices thus unlawfully gotten and retained: else let them know that they are certainly to be smitten with the divine malediction. [Lynd., p. 311.] 'Farther, there are some who, under pretence of general privileges obtained from the apostolical see, intrude themselves to hearing the confessions of such as are subject to bishops in contempt of episcopal authority, without asking the bishops consent, contrary to the apostolical intention. For the repressing of these men's presumption, we forbid [z]under pain of excommunication that any one for the future, without the express or reasonably presumed licence of the bishop, do presume to hear the confessions of his subjects, unless he be exempt as to the point of hearing confessions from the ordinary jurisdiction, both diocesan and metropolitical, by the express tenor of his privilege. Let the transgressors be proceeded against as rash usurpers, and abusers of privileges*.

[u] See the constit. of Stephen Langton, Lyndwood. He would rather have said of Boniface, if he had not known that his constitutions were not received†.

[x] This jingle is lost in the last edition of Lyndwood, but it stands clear in Sir H. Spelman and the Oxford copy. Yet Lyndwood affirms that curates may absolve in any case not expressly reserved in the canon, but it is from the lesser excommunication only, which he supposes may be incurred *ipso facto*, as when a man converses with one excommunicate with the greater excommunication‡.

[y] By this phrase, used here and elsewhere in the constitutions of Archbishop Peckham, one would think that imposition of hands on penitents was still in use. See also Lyndwood's gloss here§.

'* [In this paragraph the copies of Lyndwood (text and appendix) Spelman and Wilkins vary chiefly as to the order of some of the words, and are all to the same effect as Johnson's translation.]

† [See above, A.D. 1222, 1, and 1261, 9.]

‡ [Cf. Provinciale, lib. v. tit. 16. p. 338, gl. *Non tenere.*]

§ [Ibid., gl. *Manus.*]

[a] This seems to be a mere gasconade, for the offenders in this point were friars who were exempt from the jurisdiction of archbishops and bishops. N.B. Lyndwood's present text is faulty in this last part of the constitution, and indeed for the most part; I here follow the Oxford copy. Sir H. Spelman is the worst of the three.

7. Whereas according to the sacred canons greater sins, such as murders*, incest, and the like, which by their scandal raise a clamour in a whole city, are to be chastised with [a] solemn penance; yet such penance seems buried in oblivion through the negligence of some, and the boldness of such criminals thereby increased. Therefore we charge that such solemn penance be for the future imposed according to the canonical sanctions. And we reserve absolution from wilful murder, whether public or private, to the bishops only, except in case of necessity. By which we intend to curb the boldness of inferiors, and not lessen the reverence of superiors. [Lynd., p. 339.]

[a] Lyndwood and other canonists mention three sorts of penance, 1, private, enjoined by any priest in hearing confessions; 2, public, enjoined by the priest for any notorious crime, either with or without the bishop's licence, according to the custom of the country; 3, solemn penance, which can be enjoined by the bishop only †, and continued for two, three, or more years: but in latter ages for how many years soever the penance was inflicted it was performed in Lent only: at the beginning of every Lent during these years the offender was formally turned out of the church, the first year by the bishop, and the following year by the bishop or priest; on every Maunday Thursday the offender was reconciled and absolved, and received the Sacrament on Easter-day, and on any other day till Low-Sunday: this was done either by bishop or priest. But the last final reconciliation or absolution could be passed regularly by none but the bishop, and it is observable, that even down to Lyndwood's time there was a notion prevailed that this solemn penance could be done but once: if any man relapsed after such penance he was to be thrust into a monastery, or was not owned by the Church; or however ought not to be owned according to the strictness of the canon, though there is reason to apprehend that it was often otherwise in fact. And indeed this solemn penance was so rare in this age, that all said on this subject was rather theory than practice, except perhaps in case of heresy.

* [Not in any of the copies except Lynd. app. (p. 28), but implied in all, as appears by Lyndwood's gloss: *Similia.* Ut puta, Homicidium. 50. di. *placuit.* Item sacrilegium et hujusmodi enormia.—Provinciale, p. 339.]

† [See the three sorts of penance, solemn, public, and private, more exactly described, Provinciale, p. 339, gl. *Solenni pœnitentia*, p. 340, gl. *Imponatur.*]

[Lynd., p. 340.] 8. Though it hath been long since ordained by the [b]holy fathers, that there be in every deanery one rector or vicar of sufficient learning, eminent in grace, and of laudable reputation, appointed to hear the confessions of the rectors, vicars, and [c]other priests and [d]ministers of the Church; and to enjoin penances, that he may be as it were a molten sea, according to the emblems of the typical temple; and[1] yet this has not been practised by the clergy; whereby God hath been injured, and the ministrations of sacraments and celebrations of masses have been made execrations: therefore we, renewing the said ordinance, do charge that it be inviolably observed for the future; not intending hereby to inhibit the said persons from going to other [e]common penitentiaries for the sacrament of penance, if they please, so that they be sure of their being duly authorized.

[1] [*dele* and]

[b] Lyndwood supposes the fifth constitution of Otto and the nineteenth of Stephen Langton here to be meant*.

[c] If this be understood of parish priests (that is, temporary vicars) or any assisting priests, says Lyndwood, they are in this respect to submit to the principal curate, whether he be rector or vicar; and the vicar to the rector, if the latter have cure of souls: see Corb. 5. 1127.

[d] I know not what these constitutions mean, says Lyndwood, in speaking of confessors, to such as are subject to the curates of the churches, and who ought to receive the sacraments, and particularly penance, from the said curates, unless you will understand them of cases reserved to the bishop.

[e] That is, penitentiaries assigned by the bishop to hear all confessions of such crimes as are reserved to his hearing, and that both for the clergy and laity; whereas the penitentiaries meant to be established in this constitution were for the clergy only.

[p. 1.] 9. The ignorance of priests† plunges the people into error; and the stupidness of clerks who are commanded to instruct the faithful in the catholic faith does rather mislead than teach them. Some who preach to others do not visit the places which most of all want light; as the prophet says, "[f]The little ones asked bread, and there was no man to break it to them;" and another cries, "The poor and needy

* [Lyndwood also refers to the constitution of Archbishop Walter, Provinciale, p. 335, as parallel to the above. See below, A.D. 1322. 10.]

† [This is also found among Archbishop Nevill's constitutions. See below, A.D. 1466; Spelman, vol. ii. p. 700; Wilkins, vol. iii. p. 599.]

seek water, their tongue is dry for thirst." As a remedy for these mischiefs we ordain and enjoin that every priest who presides over a people do four times in the year, that is, once a quarter, on some one or more solemn days, by himself or by some other, expound to the people in the vulgar tongue, without any fantastical affectation of subtilty, the fourteen articles of faith, the ten commandments of the decalogue, the two precepts of the Gospel, or of love to God and man, the seven works of mercy, the seven capital sins, with their progeny, the seven principal virtues, and the seven sacraments of grace. And that ignorance may be no man's excuse, though all ministers of the Church are bound to know them, we have here briefly summed them up. Ye are to know then that there are seven articles of faith belonging to the mystery of the Trinity, four of them do belong to the Deity intrinsically, three of them to its operations. The first is the unity of the divine essence in the indivisible Trinity of the Three Persons, as it is said, "I believe in one God." 2. To believe the Father to be God unbegotten. 3. To believe the Son to be God only-begotten of God. 4. To believe the Holy Ghost to be God neither begotten nor unbegotten, but proceeding both from Father and Son. 5. To believe that the creation of every creature, visible and invisible, is from the entire indivisible Trinity. 6. Is the sanctification of the Church by the Holy Ghost and by the sacraments of grace, and by all those things in which the Christian Church communicates together: by which we understand that the Church by the Holy Ghost with her sacraments and laws is sufficient for the salvation of every man, though he be a sinner to never so great a degree, and that out of the Church is no salvation. 7. Is the consummation of the Church in eternal glory, both as to soul and body, which is truly to be raised up again; and by the rule of contraries the eternal damnation of the wicked. The other seven articles belong to Christ's humanity. 1. Is His Incarnation, or assuming of flesh of the glorious Virgin only, by the Holy Ghost. 2. Is the nativity of God Incarnate from the incorrupted Virgin. 3. Is the true passion of Christ, and His dying on the cross under the tyrant Pilate. 4. Is the descent of Christ into Hell (for the conquering of it) as to His soul, while His

[Lynd., p. 54.]

[p. 2.]

Body rested in the grave*. 5. Is the true resurrection of Christ. 6. Is His true ascent into heaven. 7. Is the sure
[Lynd., p. 54.] expectation of His coming to judgment. And there are ten commandments of the Old Testament, three whereof respect God and are called commandments of the first table, seven respect man and are called those of the second table. In the first all idolatry is forbidden, "Thou shalt have," &c. In this is implicitly forbidden all sorcery, incantation, superstitious characters, and such figments. In the second, "Thou shalt not take the name," &c., principally all heresy is forbidden, secondarily all blasphemy, and irreverent naming of God, especially in perjury. In the third, "Remember that thou keep," &c., the Christian worship is enjoined, to which laymen as well as clerks are bound: and here we are to know that the obligation to observe the legal Sabbath, according to the form of the Old Testament, is at an end, together with the other ceremonies in that law: to which in the New Testament hath succeeded the custom of spending the Lord's day, and other solemn days appointed by authority of the Church in the worship of God: and the manner of spending these days is not to be taken from the super-
[p. 57.] stition of the Jews, but from canonical institutes. The first commandment of the second table is "to honour father and mother." In which we are explicitly commanded to honour our parents both in temporals and spirituals; implicitly to honour all men as their degree deserves. Yet not only our carnal father and mother, but our spiritual is here understood, so that "father" signifies the prelate of the Church, whether mediate or immediate. "Mother" signifies the Church, which hath all true catholics for her sons. The second is, "Thou shalt not kill," in which all unlawful murder of any one by consent, word, deed, or approbation is explicitly forbidden; implicitly all unjust hurt done to another: he kills spiritually who does not relieve the indigent, as they do also who detract from, oppress, or injure the innocent. The third is, "Thou shalt not commit adultery." Here adultery is explicitly forbidden, implicitly fornication, which is explicitly

* [Quartus est descensio Christi ad inferos in [1]anima, quiescente corpore in sepulchro, ad spoliationem tartari[2], W.

[1] in anima, *deest*, MS. O.
[2] seu inferni, *addit*, MS. L.

Lyndwood's text is the same as that of Wilkins.]

forbidden in Deuteronomy xxiii. 17*, and all mixture of man and woman, unless when excused by the good [designs] of matrimony; as also all voluntary pollution by what means soever designedly procured. Fourth is, "Thou shalt not steal," in which is explicitly forbidden all laying of hands on what belongs to another, without consent of the owner; implicitly all injurious usurpation of what belongs to another, whether by fraud, usury, violence or terror. Fifth is, "Thou shalt not pronounce false testimony against thy brother or neighbour," in which it is explicitly forbidden to testify what is false to the hurt of another; implicitly to testify what is false for the advantage of an unworthy man: all lies are here forbidden, especially such as are hurtful. Sixth is, "Thou shalt not covet the house of thy neighbour." To supply the sense, you must say "to his wrong;" and in this commandment is forbidden implicitly the coveting the immoveable goods of another, especially of a catholic. Seventh is, "Thou shalt not covet thy neighbour's wife, nor his man-servant, nor his maid-servant," &c. where all coveting the possessions of another is forbidden, with respect to moveables. The gospel adds two commandments to these ten, viz. the love of God, and our neighbour. He loves God who keeps the commandments aforesaid out of love, not out of fear of punishment. But a man ought to love his neighbour as himself: where the particle 'as' does not import equality, but conformity, that is, for good, and not for evil: "as thyself," that is, spiritually, not carnally, as carnally implies somewhat vicious: "as thyself," that is, in prosperity and adversity, in health and sickness. "As yourself" in respect to temporals, so as to love every man more than all temporal abundance: "as yourself," insomuch as to love your neighbour's soul, and the eternal salvation of it, more than your own temporal life: as you ought to prefer the life of your own soul to your carnal life: "as yourself," so as to succour every man in case of necessity, as you desire to be succoured yourself. [h]Six works of mercy are manifest from St. Matthew's gospel, to feed the hungry, to give drink to the thirsty, to entertain the stranger, to clothe the naked, to visit the sick, to comfort the prisoner.

[Lynd., p. 59.]

[p. 60.]

[Matt. xxv. 35—40.]

* [Johnson *omits*, ubi dicitur; "Non erit meretrix de filiabus Israel, nec scortator de filiis Israel." Lynd. W.]

[Tobit i. 17.] The seventh is inferred from Tobit, which is to bury the bodies of the dead. The seven capital sins are pride, envy, anger, [1]carelessness, covetousness, gluttony, luxury. Pride is a love of one's own excellency; from whence springs boasting, ostentation, hypocrisy, schism*, and the like. Envy is the hatred of another man's felicity, from whence comes detraction, murmuring, dissension, perverse judgment, and the like. Anger is a desire of revenge, and of hurt to another, which when it rests in the heart, produces hatred, persecution in word and deed, blows, slaughter, and the like. Carelessness is a loathing of spiritual good, insomuch that a man delights not in God nor divine praises, and it is attended with laziness, cowardice, despair, and the like. Covetousness is an immoderate love of plenty, whether in moveables or immoveables, and that either in getting or keeping them: from whence comes fraud, theft, sacrilege, simony, and all filthy lucre. Gluttony is an immoderate love of the pleasures of taste in eating or drinking: and there are five ways of sinning in it, 1. As to time, when one eats too early, too late, or too often. 2. In quality, when delicate meats are studied. 3. In quantity, when one eats or drinks too much, which is the vilest kind of gluttony, when the body is made heavy, the inward or outward sense is obstructed, or the bodily health impaired. 4. In greediness, or voracity. 5. Niceness in cookery in order to excite a gluttonous appetite†. Luxury ought not to be explained; [Lynd., p. 62.] the stench whereof infects the common air. The principal virtues are seven, faith, hope, and charity, which regard God, and are called theological; [2]prudence, temperance, justice, and fortitude, which regard a man's self and his neighbour‡. It is an act of prudence to choose what is good; of justice to do what is right; of temperance, not to be ensnared with pleasures; of fortitude, not to desist from doing good on account of straits and difficulties: and these are called cardinal, that is, principal virtues; because the other virtues are derived from these. Of which at present

* [Sasinata. "MS. sic." W. Schismata, Lynd.]

† [Johnson *omits*, "quod quandoque continetur in hoc versu; præpropere, laute nimis, ardenter, studiose." W.]

[2] ‡ [prudentia, justitia, temperantia et fortitudo, per quas homo ad seipsum et ad proximum ordinatur. W.]

we will no longer treat, because we are labouring for the simple only. There are seven sacraments of grace, of which the prelates of the Church are dispensers, and five thereof every Christian ought to receive, viz. Baptism, confirmation, penance, eucharist in its proper season*, and extreme unction: which last ought to be given to them only who seem to be in danger of death, and to them let it, if possible, be given while they have a sound mind and reason: and we advise it to be given to them that are in a frenzy, or alienation of mind (if they had before a due care of their salvation) with good assurance. For we believe, and have learned by experience, that the receiving thereof contributes to their getting a lucid interval, or at least to their spiritual good, that is, increase of grace, upon condition that they be sons of predestination, how frantic soever they be. There are two other sacraments, order and matrimony: the first is proper for the perfect; the other, in the times of the New Testament to the imperfect only. And yet we believe it confers graces (if it be contracted with a sincere mind) by its sacramental virtue. [Lynd., p. 42.]

[f] Lam. iv. 4; Is. xli. 17.

[g] Here Lyndwood distinguishes solemn days instituted by authority of the Church from the solemnities commanded by secular princes for a victory obtained, or for the marriage of themselves or their children; these latter, he says, were called *feriæ repentinæ*, and adds, that they were not enjoined out of reverence to God, but for other reasons.

[h] Here Sir H. Spelman's copy passes to the general excommunications, constitution 10, omitting what comes between, and gives the excommunications imperfectly: and it is indeed a very erroneous copy throughout.

[i] *Accidia* in Lyndwood's present copy, *accedia* in the Oxford copy. I take this latter to be the true reading, and suppose it to be intended to mean as the Greek, ἀκηδία, indolence, or carnal security, as our divines often call it. I know the ecclesiastical Latins sometimes turn it *mœror*, *tristitia*, and the Greek word may perhaps bear that sense: but I take the former to be the most just renditions. Instead of this the modern books of the papists in English have sloth †.

10. At the same time let the sentences passed by us and [Lynd., p. 51: cf. ibid., p. 353.]

* [This limitation is not in Wilkins, but in the parallel part of Archbishop Nevill's constitutions the words stand thus; eucharistia, suo tempore extrema unctio. Wilkins, vol. iii. p. 601.]

† [Secunda radix (sc. vitiorum) est accidia quæ est desidia quædam corporis et animæ, et quasi mentis tristitia.—*Synodus Exoniensis.* Wilkins, vol. ii. p. 164.]

our predecessors be published; as for instance, they are excommunicated by the council of Oxford who deprive churches of their rights, and that endeavour to infringe or disturb their liberties by malice, and contrary to justice; where three sorts of men are excommunicate, such as take away from churches their rights, such as infringe their liberties, such as disturb them; which we understand not only of the general liberties of the whole Church, but both in regard to spirituals and temporals*. On which account we do especially believe them to be excommunicate who obstruct the process of ecclesiastical causes by the [k]letters or laws of a lay court; causes which so belong to the ecclesiastical court that they cannot, and never were accustomed to be determined by a secular judicature. 'We say this not with an intention to apply these sentences to them only, nor to approve other disturbances given to the ecclesiastical laws; but because our will is, that such enemies of God and the Church be chastised with due rigour†. Farther, by decreeing the same sentence we charge all those to be denounced excommunicate, who by a false pretence of objections obstruct episcopal and archiepiscopal process, or evade discipline.

[k] It is as clear as the day that this archbishop does here renew those very articles of excommunication which he first published at Reading, and was afterwards forced to revoke, See const. 3. 1279, and notes there. It seems probable that the temporal barons and he were now in a better mutual understanding than before, or that the Welsh by their hostilities gave the king such avocations from his English affairs that he less concerned himself what the bishops did, or that he did not find himself in condition to oppose the attempts made by them.

Here follow the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth and eleventh articles of general excommunication contained in the third constitution of this archbishop at Reading, as they have been before presented to the reader with little or no variations; then the constitution proceeds as follows.

* [et sine ratione contentiose turbantes eadem. Quod non solum intelligimus de generalibus libertatibus universalis Ecclesiæ verum etiam tam de spiritualibus quam de temporalibus contra justitiam ecclesiæ cujuscunque. W.]

'† [Not in Wilkins.]

And let archdeacons make enquiry concerning this publication, and as often as they find the priests not to have published the said moral instruction, and the above written sentences of excommunication at the appointed times, let them reprove them, and compel them to supply the omission by [l]canonical correction.

[l] That is, by a moderate suspension, says Lyndwood; for, he says, the archdeacon cannot lay a pecuniary punishment on the transgressor, because he has no power to dispense with him*.

11. Whereas the Holy Scripture declares, that pastors are bound to feed the flocks committed to them, and the mouth of the ox that treadeth out the corn is not to be muzzled; we ordain that rectors who do not corporally reside on their churches, and have no vicars, do by their stewards keep hospitality, according to the value of the church; so far at least, as to relieve the extreme necessities of the poor, and that they who travel there, and [m]preach the word of God, may receive necessary food, lest the churches be justly deserted by the preachers through the violence of their wants: for the labourer is worthy of his meat, and no man is bound to bear arms at his own cost. [Lynd., p. 132.]

[m] This constitution was made by Archbishop Peckham, in favour of his own brethren the friars, who travelled under pretence of preaching. Lyndwood here bears hard upon them for sauntering up and down in the parishes where they preached, and begging the people's alms after they had received what was sufficient at the parsonage house†.

12. Some rural deans are defamed for diabolical craft in citations contrary to the common order of law; that is, they sell certificates for money to fraudulent men, when no notice of the citation is given to the party concerned, either before making the certificate or afterwards, and so the innocent is condemned. For the cure of this we ordain, that no certificate be given to any but what has first been publicly read at high mass in the church where the party cited dwells, or sojourns for the most part. And we add this qualification, that the party cited have sufficient time allowed him to make [p. 81.]

* [Cf. Lyndwood, Provinciale, lib. i. tit. 10. p. 52. gl. *Pœna canonica.*— *Compellant.*]

† [Ibid., p. 133. gl. *Corporis alimento.*]

his appearance at the time and place appointed. And if in some cases they are so straitened for time that there is no room for delay, [n]let the certificates be given in the church, or in some public place before witnesses, after the citation has been first made before witnesses also; and so that the day and place of the citation be expressed in the certificate; and let no certificate be made before the citation. And [o]let rural deans be sworn every year in the bishop's synod to do this.

[n] That is, for delaying the certificate till next high mass.

[o] Lyndwood supposes the reason of this might be that new deans were yearly elected; however the canon supposes that the bishop every year held his synod.

[Lynd., p. 76.]

13. [p]We have considered the horrible malice of some, that when the possessor of an ecclesiastical benefice hath been absent at a great distance, a crafty adversary coveting what belonged to him hath invented a lie, viz., that the absent man is cited before the judge, and that he himself is his proctor; and procuring the absent man to be cited in order to defend his cause in the court, he shews his forged proxy to some dean or superior, and tells him, "because my seal is known to few, I desire you would put the seal of your office to this my proxy;" and by the wages of unrighteousness he obtains his request. And by virtue of this false proxy so obtained he engages in suit with another, who feigns himself his adversary, and carries on the fraud, till at last he gets possession by sentence of court; while the true owner, whose estate is subverted, knows nothing of the matter: desiring therefore to obviate such detestable frauds, we forbid every dean, archdeacon, and his and every bishop's official to put their seal to any proxy, unless it be asked publicly in court; (or out of court, when he that constitutes the proctor, and is known to be in truth the principal party, does personally request it;) that so all fraud may be excluded. Whatever dean, archdeacon, or his official, or bishop's official transgresses this out of set malice, let him for three years be suspended from office and benefice. And let the advocate, whatever he be, who procures a false proxy to be made, be suspended for three years from the office of advocate, and be

incapable of an ecclesiastical benefice. And if he be married, [q]or hath been [r]twice married, let him be excommunicate *ipso facto*. And let what has been done by virtue of the false proxy be esteemed as not done at all. And let the proctor himself, who was the chief actor, be for ever repelled from doing any [s]legal act. And let all of them upon conviction be bound to the party injured in their full gains, and to make good all the damages.

[p] Lyndwood calls this the fifteenth constitution.

[q] And for that reason be incapable of a benefice.

[r] *Bigamus*, Lat.; that is, one that hath married a second time, or hath married a widow, or a woman corrupted.

[s] In a large sense buying, selling, letting, hiring, entering into any society, &c., are legal acts, without which a man can scarce live. But Lyndwood inclines to understand this of judicial acts of law for the advantage of the party, and from these such transgressors are excluded *.

14. We have considered that true possessors of ecclesiastical benefices are often turned out in our province by a diabolical fraud: for some through falseness and ambition procure themselves to be presented to benefices by the patrons, and obtaining clandestine inquests to be made by deans or others, get possession of them; and thus the demandant becomes possessor, and the possessor a plaintiff, contrary to all justice. Now we, desiring to extirpate this villany from our province, ordain that no dean, or any other prelate, except a bishop, whose authority we lay under no restraints by this ordinance, make [t]inquest in case of a presentation unless in full chapter, the possessor being first lawfully cited, and so much time allowed him as may be sufficient for consulting with wise men, and providing for the defence of his estate. And we decree that whatever is for the future attempted contrary to this our ordinance be of no force. And we condemn the dean or prelate that made the clandestine inquest to satisfy all damages suffered by the possessor, and exclude the ambitious [aggressor] for ever from the benefice on which the attempt was made, and suspend him from obtaining any other benefice for three years. [Lynd., p. 217.]

[t] Called in the law *Jure Patronatus*.

* [Cf. Provinciale, p. 78, gl. *Actu legitimo.*]

[Lynd., p. 152.] 15. If He who turned the chapmen out of the temple had finished what he began, the poor would not be defrauded by farming contracts, which convert that to Mammon, which was to have been applied to the bowels of Christ: for the cure of this plague we firmly enjoin that what was wholesomely provided concerning farming in [u]the council of Oxford be observed, that is, that churches be not farmed, but for necessary causes to be approved by the bishop; and we ordain, that they be let to holy and reputable ecclesiastical persons, whom the bishops may freely coerce; and on condition also, that a [x]fat portion out of such farms be assigned to the poor parishioners agreeable to the law at the discretion of the bishop, which is faithfully to be distributed among them under the testimony of four credible witnesses of the same parish. 'And that all fictitious contracts by which churches are farmed to laymen in the pretended persons, or under the name of clerks, or [y]carriers of holy water, may be set aside*, we ordain by approbation of the sacred council that if any clerk be discovered to be guilty of such an artifice, he be punished according to the [z]statute of Othobon of holy memory, and more severely if the prelate think fit.

[u] See const. of Stephen Langton, 16†, 1222.
[x] Not less than a sixth part, Lyndwood‡.
[y] See the last const. of Boniface, 1261.
[z] See const. of Othobon, 20, 1268.

[p. 213.] 16. We have found that many religious houses of the order of St. [a]Augustine do not meet with the rest in their general chapter held every third year, according to the general council, by reason that they formerly belonged to certain mother churches beyond sea, (from which yet they have a long time been separated,) by occasion of certain [b]ceremonies

* [Et ut ab hujusmodi firmis omnis contractus imaginarius subducatur, quo in personis clericorum falso suppositis, vel sub nomine bajulatus, ecclesiæ ad firmam laicis conceduntur. Lynd.

*Quo.* Scilicet contractu.

*Bajulatus.* Quia fingunt aquæbajulum fore firmarium, cum non sit. Lynd., gl. Provinciale, p. 153. cf. ibid. gl. *Falso suppositis.*

Et ut ab hujusmodi firmis omnis contractus imaginarius subducatur, quia in personis clericorum falso subpositis, vel sub nomine ballivatus ecclesiæ ad firmam laicis conceduntur; W.]

† [For the constitution to which Abp. Peckham refers, see Wilkins, vol. i. p. 591, Concilium Oxoniense, c. 36; and above, A.D. 1222. 49, p. 119.]

‡ [Provinciale, p. 153, gl. *Juri consona.*]

received by the said mother churches, by which they differ from other houses of the same order in the province of Canterbury: and because it is a vile part which does not agree with its whole, we ordain that for the future all such houses be admonished in a special manner by the bishops, that they assemble together with the other canons in the general chapter to treat with them in common concerning the government and reformation of their order; with a saving to the observance of their own ceremonies; or if there be any notable diversity between them and the others as to the [c]substantials of religion, let there be a general chapter for them apart from the rest, or else let them be compelled to do this by ecclesiastical censure.

[a] St. Augustin of Hippo never was the founder of any order of monks, but there was an order that assumed his name.

[b] All the diversity which Lyndwood knew as to ceremonies among the canons of St. Augustin*, was that some of them wore a linen rochet, and a black cope over it, open before: some wear nothing but white linen, or woollen, some a black cope over that, close, and a cross impressed on it before; some go all in white with a cross before, some go in boots like monks, others in large shoes like seculars, and they had some difference in their food, and times of fasting.

[c] The substantials of all the regulars, says Lyndwood, consisted in an abdication of property, observation of chastity, and obedience. But then he observes that the ends of their institution were very different, some for prayer and study, as the Carthusians, some for hospitality, some for preaching (among which the Augustinians), some for fighting.

17. Enormous lust is so prevailing, that some without any regard to the laws and canons published to excite the chastity of nuns, commit incest and sacrilege with them; for remedy whereof we lay all clergymen, and laymen who practise such filthiness, under sentence of the greater excommunication; reserving the power of absolving them to the persons of the bishops only, except at the point of death, at which time any priest may absolve them; upon condition that if they recover they do within three months make confession to their proper bishops, or in the vacancy of the see to the guardian of the [Lynd., p. 322.]

* [Compare the above notes of Johnson with Lyndwood's statements at length, Provinciale, p. 213, glosses, *Sancti Augustini.* — *Ultra marinis.* — *Cæremoniarum.* — *Observantia.* — *Aliis canonicis.*—*Substantialia.*—*Notabilis diversitas.* See also Dugdale, Monasticon Anglicanum, vol. vi. p. 37—49, and Fosbrooke's British Monachism, p. 381. ed. Lond. 1817.]

spiritualities, or the dean of the cathedral church, under pain of anathema.

[Lynd., p. 212.] 18. Many nuns, [d] like Dinah, delighting in an ill habit of wandering, frequently fall into a like, or greater scandal: now we, consulting their salvation rather than their pleasure, to provide against this danger, forbid any one of them under pain of excommunication, to stay even in company with a sister nun, much less without it in the house of her parents, or relations, much less of others, of how great estate, dignity, or sanctity soever they be, above three natural days for the sake of diversion; nor above six days upon any occasion whatsoever, except sickness; unless the bishops for some necessary cause shall sometimes please to have it otherwise, whose consciences we onerate in this point in respect to the tremendous judgment. We extend not this to nuns who are [p. 202.] forced to beg for their necessities: and some nuns are so far deceived as that though they are of lawful age, and [e] of years capable of craft, after they have lived, above a year, a monastic life among the nuns, they think they are not professed, and that they may return to a secular life, because they have not received the bishop's benediction, nor made their solemn vow. We to remove such mistakes, declare by authority of the present council, that such as have voluntarily led a regular life in a college for above a year be deemed *ipso facto* professed; so as not to be permitted to return to a secular life; though they are solemnly to be consecrated, or veiled by the bishop. We give the same judgment as to monks, and all other religious where there is no [f] canonical impediment; that if they have for above a year willingly worn the religious habit in a monastery, and then rejecting it return to a secular life, they be repelled as apostates from ecclesiastical benefices; and be compelled, as the law requires, to return to their monasteries. Let archdeacons make diligent enquiry concerning these: because we know many who have the heart of a wolf under the fleece of a sheep.

[d] Lyndwood here says, that none of the English nuns that were under the care of the diocesan, were close shut up in their houses; though some that were under the inspection of exempt abbots were indeed confined, as all were to be by the canon law *.

* [Cf. Provinciale, p. 212. gl. *Cum socia.*]

[d] *Doli capaces* were those of seven years old and upward: the lawful age for professing the monastic life was, in a woman, twelve.

[f] Canonical impediments were want of the father's, or husband's consent.

19. Farther, there are many who in fact appear to be in full purpose to relinquish the secular life, and give certain [g]tokens of betaking themselves to a cloister, who yet by the prevalency of the flesh return to the vomit of a secular life, like wandering stars: for though the laws have determined that such as these cannot desert their religious habit, but must at least continue in a more loose state of [h]religion*; yet some not ashamed of the infamy of apostacy, after they have made a show of absolutely leaving the secular life, turn from Jerusalem to Egypt: therefore we ordain that the ordinaries diligently search after such, and reclaim them to their former state by [i]withdrawing from them both their office and benefice, if they have any, or compel them at least to be loose regulars. If such apostates are laymen, let them be compelled to return to the studies of their salvation by ecclesiastical censure. We extend not this ordinance to those with whom the see of Rome hath dispensed. [Lynd., p. 305.]

[g] These tokens were, renouncing a benefice or secular estate, taking the monastic habit, attending the worship in religious houses, declaring their intentions of chastity and obedience, making their tonsure larger than it was before, if they were clerks; and it is evident that this constitution was chiefly intended against men that were in orders.

[h] The reader will remember that religion in this and many other canons signifies monkery.

[i] The constitution does not say by depriving them, says Lyndwood, because they were supposed already to have renounced all benefices, viz. when they became monks.

20. Religion is the rather to be guarded from secular employ, because devotion is obstructed when the mind by outward cares is drawn off from the study of the one thing: therefore it was wholesomely provided in the [k]council of Lambeth that no religious of any profession whatsoever be executors of testaments, unless it be done by the licence and [p. 167.]

* [quin saltem in religione aliqua arctiori vel laxiore perpetuo maneant, W. Lyndwood omits 'arctiori vel,' but adds this gloss: *Laxiori.* Supple, ad minus: nam arctiorem ingredi potest talis si voluerit, cum non inveniatur prohibitum, Provinciale, p. 306.]

will of the ordinary. We think fit to add that no religious be allowed to be executor of any testament, unless his [l]superior give caution for him that he shall sufficiently execute it, and give account of the surplus, if any be, and without difficulty be answerable to the ordinary for any damages occasioned by him. And because some that wear a religious habit, though they are not executors, yet are [m]distributors of the goods of a defunct by their own rashness, or by the imprudence of others by which the goods of men are embezzled, we give the same charge concerning distribution, that we have above given concerning execution. And let none in any other manner concern himself in any execution, or distribution, under pain of anathema. Therefore let them who cannot give sufficient caution know, that they are by authority of this council perpetually disabled from such execution and distribution.

[k] See the fifteenth constitution of Boniface, 1261, about the middle, and the seventh of Stratford, 1342, *versus fin.*

[l] The superior only could give security, because by this constitution and by the tenor of the canon law, without the superior's leave the monk or canon could not be executor, and therefore was not responsible to the ordinary for what he did; especially if his[1] house were exempt from the bishop's jurisdiction.

[1] [this, ed. 1.]

[m] It appears that testators of old did sometimes appoint one to pay their debts, who was called a 'solutor,' another to pay their legacies, and he was 'distributor:' and men did sometimes by indirect means thrust themselves into such business.

[Lynd., p. 120.]

21. Though the name of religion be by use appropriated to the monastic life, [yet] the good behaviour of clergymen has a remarkable degree of religious life in it, if those things be observed which the canons have decreed. But alas very many clergymen of this famous country imitate the madness of the Jews, who preferred the fashions of the Grecians to those of their fathers: they are ashamed to appear as clergymen, and take the military dress to please fools, and provoke wise men. And whereas the crown is the distinguishing mark of a soldier of the Church, and of a heart enlarged and open to the celestial rays, they hide their crowns with hair-laces, and like the Jews have a veil upon their hearts, whereby those rays are repelled. But we sticking to the [n]statute of

the lord Othobon do strictly ordain and charge, 'that every clerk in holy orders have his outward garment °unlike to soldiers and laymen in its shape and comeliness*. And because the said legate, against clerks that wore coifs and hairlaces before their prelates, or people, ordained, that if they did not reform upon a monition, they should *ipso facto* incur a suspension from office, in which if they continued for three months, they should then be suspended from benefice, and not be absolved till they have given the ᵖsixth part of their ecclesiastical goods to be distributed to the poor by the hands of the bishops, and yet be otherwise punished at the bishop's discretion: we observing how little effect this statute hath had, because lesser prelates dare not admonish such monstrous clergymen, on which account they seem to have fallen into the punishments ordained by the said legate as their pusillanimity deserves, and such clerks seldom come into the presence of bishops; we ordain that (since ignorance of the law does not excuse clergymen) such clergymen†, as often as they wear such coifs or hairlaces before their prelates, or people, do without any monition fall under the punishments aforesaid; unless it be in a journey‡. And we command that special enquiry be made after such for the future in every deanery, and that whatever their degree or dignity be, they be proceeded against in form of canon.

ᵖ See Const. of Othobon, 5, 1268.

° In the original is added *anterius aut posterius non byrrhatam*. Lynd-

* [ut quilibet clericus constitutus in sacris ordinibus vestem exteriorem gerat dissimilem militari vel laicali, utpote anterius et posterius non birratam, vel saltem ex forma sua militari vel laicali congrua honestate dissimilem. Lyndwood and Wilkins.

*Birratam.* Birrum, secundum *Januensem*, dicitur grossum vestimentum: inde *birratus*, *birrata*, *birratum*, i. e. *birro indutus;* et isto modo sumitur 30. *di. c. si quis virorum. ubi de hoc per Archi. ver. birris.* Sed, secundum istum sensum dat intelligere, quod clerici hujusmodi non debeant uti vestibus vilibus vel abjectis, quæ sint contra ipsorum honestatem. *Birrum* aliquando ponitur pro *gremio*, ut aliqui intelligunt illud quod legitur de Sancto Brixio, qui portavit prunas ardentes in birro suo, licet in dicto loco, birrum, ut supra dixi, posset supponere pro aliquo vestimento de grosso panno quo usus est; unde capiendo birrum pro gremio, potest esse hic sensus, ut clerici non habeant vestes ante et retro birratus, i. e. scissas, sive divisas, aut complicatas, ex qua scissura sive plicatura multa fiant gremia, ad quod facit 21 *q.* 4. *præcipimus* ibi, *superfluitat fissuræ, &c.*, Lyndwood, Provinciale, p. 120.]

† [Johnson *omits*, suæ proterviæ merito, Lynd. W.]

‡ [Johnson, following Lyndwood, *omits*,

Caveant insuper omnes illi, de quibus loquitur legatus, qui moniti infularum insolertiam publice detulerint per prætaxati temporis spatium, ne in suspensionem ab officio et beneficio inciderint merito culpæ suæ, W.]

wood, who lived within a hundred and fifty years after Peckham, could but guess at the meaning of this expression. He says it may signify not coarse, or sordid, behind or before: or it may, says he, imply that it shall not be *scissa vel complicata*, slashed or surpled, if I mistake not, behind or before. Sir H. Spelman in his Glossary supposes that the meaning is, that it should not be like the Irish plaid*. I take it to signify not surpled, &c., for this archbishop in his directions to the nuns of Godstow has these words, *nec etiam byrrhorum immoderantia vestes sibi faciant latitudine fluctuantes*†.

[p] The sixth part of that year's profits, says the Const. of Othobon; and Lyndwood does so understand the words here, and asks how this was possible, since the offender is supposed to be suspended from benefice? But I answer, he is supposed first to have received one quarter's profit, which was more than a sixth, and by the year we may understand the twelve months last past, before he was suspended from benefice‡.

[Lynd., p. 45.]

22. Whereas it is by law forbid, [q]that the sons of rectors should immediately succeed their fathers in the churches where they ministered; and it is certain, that if the contrary be attempted the benefices are vacant; we charge that prelates make diligent enquiry after such vacant churches, and not delay to provide for them as the law requires; and beware for the future that they admit not such to benefices by any [r]title whatsoever; that there be no room for men to creep into the inheritance of Him that was crucified, by hereditary succession.

[q] This was, it should seem, first forbidden by Alexander the Third, pope of Rome, after the middle of the twelfth century: there are ten rescripts of this pope all directed to English bishops upon this head, standing all together, *Decretal.*, lib. i. tit. 17. c. 2—11. By one of these it appears that the archbishop of York had then power granted him by that pope to dispense in this case; yet by a decretal of Pope Clement, iii. 1189, a bishop's son lawfully begotten might be beneficed in his father's cathedral. *Decretal.*, lib. i. tit. 17. c. 12.

[r] That is, collation, institution, or donation§, Lyndwood.

* [This statement seems rather to be taken from Du Cange, Glossarium, art. Byrratus. Cf. Spelm., Glossarium Archæologicum, pp. 81, 2. art. Birrus.]

† [Spelman, vol. ii. p. 327.

The whole passage in Wilkins stands thus:

Circa vestimenta autem monialium S. Benedicti regula solicite observetur; cujus rei gratia inhibemus, ne de burneto unquam in posterum induantur, nec rugatas habeant tunicas, nec etiam birrorum immodestia vestes sibi faciant latitudine fluctuantes, cum hoc nihilominus solicite servantes, quod circa talia in Oxoniensi concilio dudum fuerat ordinatum. Conc. Brit., vol. ii. p. 38.]

‡ [See above, Const. Othobon., A.D. 1268. 5. Lyndwood, Provinciale, p. 121. gl. *Ecclesiasticorum bonorum.*]

§ [*Ullo titulo* . . . Hic vero dic *titulum* significare ut notat *Archi. ubi supra*, et dic, *ullo* titulo, sive per viam collationis, præsentationis, nominationis, sive electionis, seu postulationis, insti-

23. In the common course of causes we have heard from many complainants that some of our fellow bishops, when they admit such as are presented to vacant churches, refuse to grant them [s]letters testifying what has been done: by occasion whereof truth often gives place to falsehood, when a dispute arises between the parties so presented and other men: but we adhering to ecclesiastical rules, which take legal instruments for evidences of fact, do ordain that every bishop give letters patent to the clerk whom he admits to a church testifying his admission, and specifying among other things what orders he has received, and by what [t]title he is admitted to the benefice. [Lynd., p. 139.]

[s] Letters of institution were given long before this. Yet John de Athon in the foregoing century supposes that institution might be proved without such letters, as Lyndwood here observes. It is probable, that the reason why such letters were denied was, that it was forbid to receive any thing for them.

[t] See note r, as above.

24. A long sickness tires the physicians; an infernal weed planted by sons of perdition is not easily rooted out; no one did ever at once convert the whole multitude of the wicked, but "ye shall," says God, "destroy these nations by little and little." The Church of England hath been long plagued with false clerks, who for worldly glory, and out of covetousness, heaping benefice upon benefice contrary to canon, and without the pope's dispensation; destroy souls purchased with the blood of our Redeemer, and like thieves live an infamous life, till being struck with the thunder of Divine indignation (as we have seen in many) they are taken from amongst us: we [u]forbade this superfetation soon after our accession, hoping gradually to cure this plague, and that no one for the future would involve himself in such a plurality; and we used wholesome terrors against what was past of this sort, intending by the help of God to bring them to effect by degrees, since the Scripture says, "Thou mayest not destroy them all at once, lest the beasts of the earth be multiplied against thee." The mercy of our Redeemer hath given some beginnings of success to our endeavours: for the unrestrained licentiousness [See Exod. xxiii. 30.] [Deut. vii. 22.]

tutionis seu commendæ, aut alterius provisionis cujuscunque: hi namque sunt modi inducendi titulum in beneficio ecclesiastico, *de præben. c. cum in illis. li. 6.* Lyndwood, Provinciale, p. 46.]

of taking benefices without scruple is suppressed*. To some God hath given the grace of compunction, so as that they have pruned away a great part of their damned pluralities; some have submitted their superfluity to be moderated by our discretion, which has not purged away the crime; for we cannot dispense in such cases, though yet we have taken some small steps toward it. But we admonish once, twice, and thrice, all and singular such possessors of pluralities, that they freely and absolutely resign their benefices within the space of six months into the hands of their bishops, (for no delay can be granted them when the infernal pit is ready to swallow them, and the mill-stone to sink them,) and that they make satisfaction according to their ability to the churches so defrauded; and never for the future do unlawfully receive the fruits of those churches by themselves or by others, privately or publicly, directly or indirectly: [x]saving to ourselves the right of providing for those benefices, the collation whereof is devolved to us by lapse of time. Else from that time forward we shall proceed against them, by the favour of the Most High, according to form of canon. And we do not intend by this monition to prejudice ourselves or our fellow-bishops, but that we may proceed against them singly in the usual method.

[u] Here the Oxford copy speaks in the present tense, *inhibemus*†, but this is contrary to the whole tenor of the constitution, or rather declamation, therefore I follow Sir H. Spelman. Lyndwood has not glossed upon it; though I remember he sometimes mentions this constitution as made by Peckham.

[x] Here is a saving to the personal interest of the archbishop but none to that of the pope. In the first constitution at Reading there was a saving to both, though to the archbishop in the first place (which by the bye was no great proof of his humility or good manners). But what was the occasion of his thus abating his zeal for the pope? It is probable that the large payment of four thousand marks, which the pope exacted of him after his return to England, and compelled him to pay, had cooled his affection to the see of Rome.

[Lynd., p. 75.] [James i. 19.]

25. St. James commands us "to be quick to hear, slow to speak;" he only is fit to be a leader, who has been learning

* [dum saltem est prohibita pristina effrænatio beneficia hujusmodi sine scrupulo admittendi. Wilkins, and Lynd., app.]

† [Lyndwood, Provinciale, Appendix, p. 33; so Wilkins, vol. ii. p. 60.]

from his youth to maturity of age. Pythagoras's scholars were obliged to five years' silence before they were permitted to discourse of the heathen wisdom. Many advocates do not imitate this prudent discipline, who after having heard one, or half a book of the law read to them, assume to themselves the office of pleading in ecclesiastical causes. And because they know not what is truly law, they betake themselves to frauds which obstruct judicial process: for the cure of which disease we ordain that no one be for the future permitted to exercise the office of advocate unless he have for [y] three years been a diligent hearer of the canon and civil law. And let him give proof of it by his own oath, when it does not appear by any just testimony, or by notoriety of fact.

[y] Lyndwood observes that by the civil law none could be advocate but he who had for five years studied, and supposes that this constitution was made only with regard to little inferior courts: but he did not think it necessary that the advocate should have heard the professors in the University, but only some private doctors. That the degree of doctors was now in being appears from the decrees of Pope Clement V., Clem., lib. v. tit. 1, c. 1, 2. By the last decree it appears that the bishop had power to confer this degree, and is suspended from the exercise of this power if he did not give an oath to the graduated person that he should not spend above three thousand turons, (which amounts to above fifty pounds sterling,) at the taking of it: though this decree was made 1312, that is, thirty-one years after this constitution, yet the degree of doctor must have been of long standing, before the expense attending it could be raised so high as this decree imports.

26. [z] The vice of ingratitude is to be detested, and especially that of subjects toward their prelates, who watch as they that are to give account of the souls committed to them; therefore we ordain that when an archbishop or bishop dies, every priest as well religious as secular, that was a subject to the defunct, be bound to say all [a] together one mass for him. And let his brethren and fellow bishops in their next following congregation say an office of the dead in his behalf; and yet singly in their chapels perform proper devotions for him, as they desire it may be done for them in the like case.

[z] It is unaccountable to me what should prompt the archbishop to make a new constitution upon this head, when the eighth of Reading was much more full and express than this of Lambeth. New laws are often

made to supply the defects of old ones, but perhaps this may be produced as a singular instance of a second law made on the same head, but much less perfect than the first. Any man would rather think that this was a spurious addition. Yet Lyndwood calls the constitution immediately foregoing *the last but one:* therefore probably this hath stood here at least these three hundred years.

[a] This seems evidently to be intended for a concelebration of mass.

Done in a council at Lambeth celebrated by Peckham, and recited in the last action of the said council on Friday the sixth of the ides of October, the dominical letter current E, A.D. 1281, indict. 9, the first year of the pontificate of Martin the Fourth, the ninth of the reign of the illustrious Edward, king of England, and the third of our consecration.

The statute of John Peckham, archbishop of Canterbury, of an uncertain time and place.

LATIN. Sir H. Spelman, vol. ii. p. 343*. [Wilkins, vol. ii. p. 49†.]

27. [b]For the instruction of them that are, and the memory of them who shall be. Whereas there is a dispute between the rectors of churches in the province of Canterbury, and their parishioners, concerning the various ornaments and things of the church: there is here underwritten what belongs to the rectors, what to the parishioners—Let all know and observe in the following manner, viz., that [c]the chalice, principal mass-vestment of the church, chesible, clean alb, amyt, maniple, girdle, with two towels, cross for processions, lesser cross for the dead, bier, cense-pot, lantern with a bell, lent-veil, manuals, banners, bells, vessel for holy water, with salt and bread, osculatory for the pax, Easter taper with a candlestick, bells in the steeple with ropes, fonts with lock and key, reparations of the body of the church within and without, as well in altars as images, glass windows, with the enclosure of the church-yard, belong to the parishioners. All other particulars and ornaments, with the reparation of the chancel within and without ought to be found by the rectors or vicars, according to the divers approved ordinations and constitutions.

* [Ex MS. Cotton Vitell. A. 2. f. 62. b.]

† [Ex MS. Colleg. Baliol. Oxon.: L. 3. Datur caput hoc paulo tamen succinctius in MS. Cotton. Vitell. A. 2. fol. 62 b. sub titulo: 'quæ debeant in ecclesiis inveniri per rectores, et quæ per parochianos.' Wilkins, vol. ii. p. 49, note a.]

[b] By this it appears in general that the parishioners of the province of York according to the first constitution of Walter Gray (which see) were bound to find several things which in the province of Canterbury were left to be provided by the incumbents, especially all the books and the vestments, excepting one suit for the mass.

[c] This is worded just as in Walter Gray's first constitution, which see; and for explication of the terms, see constitution 4. of Winchelsey, archbishop, 1305. Here is a mistake proceeding from placing the chalice before the missal, whereas it ought to stand as in the Oxford copy of this constitution. *Missale, calicem, vestimentum principale* *, *&c.*, "the missal, chalice, principal vestment," &c.

* [The words so stand in the above constitution as attributed to Robert Winchelsey, Lynd., app., p. 35; but Lyndwood's text, Provinciale, p. 251-2, of Robert Winchelsey's constitution has the words with their context thus:

Præcipimus quod teneantur (sc. parochiani) invenire omnia inferius annotata, viz., legendam, antiphonarium, gradale, psalterium, troperium, ordinale, missale, manuale, calicem, vestimentum principale cum casula, dalmatica, &c.

Wilkins gives the whole constitution of Peckham as below, "ex MS. Colleg. Baliol. Oxon. L. 3."

Ut autem existant parochiani in singulis certiores, intelligant et observent universi, quod calix, missale, vestimentum ipsius ecclesiæ principale, viz., casula, alba munda, amictus, stola, manipulus, zona cum duabus tuallis, crux magna processionalis, et alia minor pro mortuis, lanterna cum tintinnabulo, thuribulum, velum quadragesimale, vexilla, campanæ, manuales pro mortuis, feretrum, vas ad aquam benedictam, osculatorium, candelabrum ad cereum paschalem, campanæ in campanili, et cordæ ad easdem, fons sacer cum serulis, et reparatio navis ecclesiæ interius et exterius tam in altaribus, quam imaginibus, fenestris earum, et vitris cum clausura cœmeterii ad ipsos parochianos pertinere. Cætera autem omnia tam in reparatione cancelli, quam in ornamentis ejusdem internis et externis, secundum diversas ordinationes et consuetudines approbatas debent a rectoribus locorum et vicariis reparari. W. See above, p. 177, note ‡.]

## A.D. MCCXCVIII.

### PREFACE. ARCHBISHOP WINCHELSEY'S SENTENCES OF EXCOMMUNICATION.

In the four first reigns after the conquest we hear no complaints of taxes laid upon the spiritual revenues of the churches, or glebes and tithes; for the exactions of William Rufus or King Stephen, two arbitrary princes, are not to be alleged as precedents. The temporalities of bishops suffered much during the vacancies of the sees, and those vacancies lasted often many years together for the advantage of the court: nay, these temporalities were often seized by the royal will and pleasure, and much money brought into the exchequer by this means. But the first regular tax laid upon the spiritualities seems to be that of which you have an account in the year 1188, which was projected by the pope, and executed by King Henry the Second for the recovery of the Holy Land. We may be sure that if such demands had been usual in the former part of this king's reign, some terms or conditions would have been inserted into the articles of Clarendon upon this head, as being the most common occasion of dispute between the prince and subjects. What subsidies were granted for the prosecution of the holy war, or for the payment of arrears at King Richard the First's return home, were demanded by the united power of the king and pope, and paid by the forward zeal of the clergy and people, in a cause which the superstition of the age would not permit to be disputed. The pope was at the head of all these exactions, and prince, clergy, and people were then entirely at his devotion. It is true King John, in the years 1203 and 1205, demanded subsidies of the clergy, but the archbishop, with his brethren, evaded or refused them; and in the next year, when this king found them stiff in their

denial, he levied a thirtieth both on clergy and laity by arbitrary force. King Henry the Third, in the year 1222, had a subsidy granted him by all his barons both lay and ecclesiastical; it was for the Holy Land, and therefore it may be presumed that glebes and tithes were affected by it, and that it was done with the pope's consent: however this was a privileged case. Two years after this the archbishops, bishops, and other barons, gave the king a subsidy in parliament: this did not reach the lower clergy; therefore they were not taxed; but by the pope's bull every bishop was obliged to assemble the clergy of his diocese, and there to raise contributions for the king against rebellious subjects.

All this time the pope made depredations upon the clergy at pleasure, and King Henry the Third assisted the pope in his oppression; insomuch that when the prelates and clergy desired his assistance against Petrus Rubeus, legate of the see of Rome in the year 1239, the king was so far from hearkening to them, that he encouraged the legate in his exactions, and offered him his own castles to imprison such prelates and clerks as opposed his demands. The king seems to have seen his error, and certainly had greater regard to the clamour of his clergy and people in the year 1246, for then he consulted with his parliament how to restrain the pope's encroachments; and he probably had done something to this purpose, if Richard earl of Cornwall had not defeated him by joining the Romish party. Yet this very prince twice at least after this asked the pope's consent to make a levy on the clergy, and had it granted him by Rustandus the legate in the year 1255, by Othobon the legate in the year 1267. So did his successor twice, (but they were for the Holy Land,) in the years 1272, 1291; when small aids were sometimes given, it was on express condition that they should not be drawn into custom (as in 1275;) this supposes them to be new things. And if there were any more royal levies made to this time, I must profess my ignorance of them, (I mean still on the lower clergy, and for their spiritual revenues,) excepting the subsidies granted in the year 1283, if they were indeed granted: for the fact is not certain, or however that the pope's consent was not had if the subsidies were granted.

And would not now any indifferent man believe that the

kings themselves, by yielding this point to the pope for a hundred years together, (that is from the first time that taxes had been laid on the clergy for their spiritualities,) had disabled themselves by their own acts and deeds from doing it without the pope's approbation. However the clergy themselves at this time were certainly of this sentiment; and King Edward was aware that this was their notion: therefore he employed William March, bishop of Bath and Wells, his treasurer, to seal up and secure all the stocks, stores, and granaries of the clergy in the year 1295; then summons the lower clergy to come up with the bishops and other prelates to Westminster, demands of them a grant of half their goods: they made some demurs; but found it vain to dispute the point with the king, and therefore ransomed one half by giving the king the other. The next year they were, by a way never used but once before, (viz. in the year 1283,) called to parliament together with the prelates and barons, and now one third of the remaining half of their goods was demanded; they with great difficulty prevailed with the king to accept a tenth; but at the same time promised to give more the next year, and the king gave his word that their grievances should be redressed. Both these promises were equally performed. At the next parliament in November at St. Edmundsbury they pleaded a bull of Pope Boniface the Eighth, which by Archbishop Winchelsey's* means they had procured, whereby they were forbid to agree to any taxation without consent of the holy see, (as it was long forbidden by the canon law, and particularly by the two last Lateran councils,) and when this excuse was not accepted they referred themselves to a more full assembly: for very many refused to obey this lay-summons of the king; they had time given them to Hilary next; but in the mean time their stock and goods were all secured by the king's command; and on the other side, the pope's bull was published: when the clergy met at Hilary in a full body, and persisted in their refusal, they were outlawed, or put out of the king's protec-

* ["It was sent to Archbishop Peckham, whom the pope had put into the see of Canterbury against the king's consent, and kept by the clergy till this occasion. Kennet, note on Daniel's K. Edw. I., p. 196." MS. note Wrangham. The book quoted is, "The collection of the History of England, by Samuel Daniel, ed. 4. 1650: but see *Constitutio Bonifacii VIII. papæ de non solvendis collectis*, A.D. 1296, in the third year of Abp. Winchelsey, Wilkins, vol. ii. p. 222.]

tion, and their goods actually confiscated; and by the advice of some great men a parliament (as they called it, though consisting only of temporal barons) was assembled at Salisbury, where they are said to have consented to a law made by the king, that if the bishops did not comply with the king before Easter, the laity should be forbid all dealings with them, and the archbishop, bishops and clergy, in convocation, ordered general sentences of excommunication to be denounced in all churches against all those who seized ecclesiastical goods; and this was probably before the pretended parliament at Sarum, *excluso clero*. If these proceedings had been against the laity, I am confident all the politicians of this age had condemned them as arbitrary and tyrannical: and certainly the nature of them was not altered by the clergy's being the only sufferers. But the truth is, King Edward's government was so severe and illegal, that his lay lords could no longer endure it: and being embarrassed with them he was under a necessity of making his peace with the Church, as he soon did, and expressed the sense of his ill treatment of his clergy with tears in his eyes, upon the archbishop's coming into his presence in order to a reconciliation.

The memory of this archbishop has been very much aspersed of late years, and it is very difficult in points of so great and tender a nature for any man so to conduct himself as wholly to escape censure; but so far as I can discern, he acted like a sincere papist. In the year 1297, he did indeed consent to a contribution, without asking the pope's consent, in a provincial convocation. But this was upon a sudden inroad of the Scots, when there was not time to send to Rome, and when the wars in France made all travelling thither unsafe: and this contribution was not granted to the king, nor levied by his officers, but collected and expended by every bishop in his diocese under the direction of the primate, as was likewise done in the other province: and the canon law expressly allowed such voluntary contributions in time of necessity, so that no lay power were concerned in collecting it, and that the clergy gave their free consent to it. (See Conc. Lat. 1179, c. 19*; Conc. Lat. 1215, c. 46†.) And this same king did effectually own the pope's authority

* [Concilia, tom. xxii. col. 228.] † [Ibid., col. 1030.]

in this respect in the year 1300, when he accepted a triennial tenth from him; and his successor Edward II. throughout his reign was willing to accept money of his clergy on the same terms. And even King Edward III., in the year 1330, was glad to share a quadriennial tenth with the pope: though afterwards he saw a just necessity of retrenching the pope's power in this respect: and for the next hundred years our kings hung more loose to the pope, till Edward IV., in 1456, forbad the pope's legate to levy a tenth here, though he afterwards compounded the matter with him, as likewise did Henry VII., and thus by degrees the convocation of each province were sufficient to give the king money without sending to Rome for the pope's consent: and Pope Boniface's bull against it is declared to be of no authority in the margin of *Sext. Decret.*, lib. iii. tit. 23*. But no archbishop perhaps lived and died with greater reputation than Winchelsey, and though the pope did not canonize him, yet the people did, so far as they were able, by resorting to his tomb, and making their oblations there for several years, till for this reason his tomb was pulled down.

The struggle between King Edward and his clergy first, then his lay lords, ended in a confirmation of the charters which he had grossly violated.

* [c. 3. ap. Corp. Jur. Can.]

## A.D. MCCXCVIII.

### ARCHBISHOP WINCHELSEY'S SENTENCES OF EXCOMMUNICATION.

LATIN. Sir H. Spelman, vol. ii. p. 428. [Wilkins, vol. ii. p. 240*.]

THE sentence of excommunication passed by Robert (Winchelsey) archbishop of Canterbury, against such as seize ecclesiastical goods, and infringe the articles of the great charter and the charter concerning forest, and against such as detain and imprison clerks†.

Robert, [a]by divine permission archbishop of Canterbury, primate of all England, to our venerable brother the lord Richard, by the grace of God bishop of London, health, and brotherly charity in the Lord. Sudden necessity and precaution do often require that remedies provided against dangers, but neglected, be vigorously repeated, and that new ones be applied; especially in things established by authority of the holy fathers, and which cannot be omitted by us bishops who are bound to keep them without endangering our profession. It was lately ordained jointly by us and our fellow bishops, in a convocation of prelates and clergy celebrated at London, after the feast of St. Hilary in the year of our Lord 1296, and at the instigation of some of them, they were enjoined by us in virtue of obedience that the seizers of ecclesiastical goods, and such as took them away by violence, without the free leave of their owners, or of their bailiffs, be publicly,

* [Ex MS. Cotton Cleopatra, E. 1. fol. 232.]

† [This title is both in Spelman and Wilkins, as also the following introduction:

Robertus, permissione divina London. episcopus, dilectis in Christo filiis decano et capitulo ecclesiæ nostræ S. Pauli London. Salutem, gratiam, et benedictionem. Literas reverendi patris domini R. Dei gratia Cantuar. archiepiscopi, totius Angliæ primatis, recepimus, formam, quæ sequitur, continentes:

After writing this letter the bishop of London again addresses his own dean and chapter, and dates his own letter,

Orseth, July 25th, in the same year. See Wilkins, vol. ii. p. 242. Spelman, vol. ii. p. 431.]

and in general, denounced to be under the sentence of the greater excommunication by the bishops themselves in the cathedral churches, and other notable places, by other idoneous men in other churches of every diocese, at the command of the diocesan. But as we have since been informed to our grief, the execution thereof has been in whole or in part hitherto omitted by some of our fellow bishops to the danger of many, especially of those who were in duty bound to have done it, from which some malevolent men have been, and will be the more emboldened to offences of this sort. And at the last renewal of the great charters of liberties and of the forest (granted by princes of old) our lord the king who made this renewal, did enact and ordain that the said charters should be sent to every cathedral church throughout the kingdom of England, and there remain, and be read before the people twice a year; and that the archbishops and bishops of the kingdom of England should pass the sentences of the greater excommunication against all those who act contrary to the said charters by fact, help, or advice, or who infringe the said charters in any point; and that the bishop publish, or cause to be published the said sentences twice a year in their cathedral churches; and that the bishops who are negligent in the publication thereof be reprehended by the archbishops of Canterbury and York for the time being; and be forced to the denunciation thereof by the said archbishops. We also and our fellow bishops there present, and assisting us in their pontificals at Westminster, with the consent of the king's council, who was himself in parts beyond sea, did solemnly pass and publish the said sentence of excommunication in English*. That therefore what has been so wholesomely, and so very profitably ordained and provided, may not lose its effect through concealment; it was provided and enjoined by us and our fellow bishops, and the prelates and [b]clergy of our province of Canterbury, in the last congregation of the prelates and clergy after the feast of the nativity of St. John Baptist at the new Temple, London, that the said sentences of excommunication against the violators of the charters be solemnly published in manner aforesaid twice a year, viz. on the feast of All Saints and Palm Sunday in

* [in vulgari, S. W.]

the cathedrals by the bishops, if it may be, else by others authorized by them. Farther, because our lord the king at the said renewal promised the prelates, and the whole community of the kingdom, that no man's goods should be seized in the king's name upon any account, without the common consent of the whole kingdom: and if it happen (which God forbid) that any evil-doers do take, or in any wise carry away the goods of ecclesiastical persons from the houses, granges, or other places belonging to them, and without the free leave of the owners thereof, or of their bailiffs, (which may not be presumed, as is above said, to be done by the will of our lord the king,) it may be difficult and hurtful to the persons so wronged to have recourse to their bishops; it seemed expedient to us and our fellow bishops, and it was agreed and enjoined by them in the said congregation, that express power be given to inferior prelates, and also to rectors and vicars of parish churches by their diocesans, solemnly and publicly to denounce the said evil-doers, who do by evident fact notoriously and manifestly do such mischief, together with their accomplices, to be involved in a sentence of the greater excommunication. Therefore,

[a] The archbishop or bishop writing to another always styled himself "by divine permission," and the archbishop or bishop to whom he writes "by the grace of God."

[b] This is the first express instance which I have observed of the lower clergy's concurring with the bishops in ordaining any ecclesiastical matter excepting what is mentioned by Boniface, const. 21, 1261. This was the second or third time that they had been drawn to a state convocation, and the archbishops frequently afterwards made use of the clergy so assembled, as if they had been called to a pure ecclesiastical synod. The archbishop by taking the clergy's advice and consent in such spiritual matters convinced them that they were not only assembled by a spiritual authority, but for spiritual purposes, which was the only way to reconcile them to these newly-invented assemblies. And farther, by this means the archbishop shewed his good inclinations towards them, and he thought this the most proper way to secure their affections to him; and a mutual good understanding was very necessary for both in such times. And archbishop Winchelsey's memory ought to be honoured by all of the clergy who value the privilege which the lower clergy now enjoy in being members of convocation: for it was he that, next after Boniface, indulged them this privilege, with submission to better judgments. Nay, all that have any regard to English liberties ought to pay respect to his memory, as one of the greatest assertors of them; and to acknowledge from this and other in-

stances, that if our bishops, as well as other barons, had not known how to value and defend them, there had been none left for those of this age to boast of and maintain.

1. We enjoin and firmly command you our brother in virtue of obedience, that [ye publish] the said sentence against seizers on goods of ecclesiastical men in every church of your diocese, as it was ordained in the first of the said congregations, and according to the said ordinance.

2. And do ye cause the said sentence against the infringers of the articles of the said charters, passed by us and our fellow bishops, with royal consent in form above said, as provided in the last congregation, to be published in times and places before mentioned, and to be throughout explained in order in English, with bells tolling and candles lighted, that it may cause the greater dread; for laymen have greater regard to this solemnity than to the effect of such sentences.

3. And do ye give full and express power (as was unanimously agreed in the last ordinance) to inferior prelates, rectors, vicars, and also to chaplains of parishes, publicly and by name to denounce the evil-doers aforesaid, and in the solemn manner before mentioned, involved in the sentence of the greater excommunication; that is, the seizers and invaders of ecclesiastical goods; if any for the future do in the places belonging to these prelates, or in the parishes belonging to the rectors or vicars, invade, seize, or take away such goods, or be the cause of having it done by notorious, evident fact: provided always, that the rectors, vicars, and priests, do not thus proceed but when the fact is evident and notorious, and the testimony sufficient: and for the suppressing the iniquity of perverse men, let the celebration of mass be stopped while such evil-doers thus solemnly denounced by name are present; and let them be solemnly denounced excommunicate every Lord's day and festival, and let them be [c]deprived of the communion of the faithful by a prohibition thereupon to be made, till they be absolved from that sentence; having first made restitution of what was taken away, and after that due satisfaction. And when due information of any such evil doings hath been made to you by any of your subjects, or comes to you by common fame, do ye cause full and speedy justice to be done by pun-

ishing such evil-doers, and their fautors and accomplices by canonical coercions, with all diligence and sharpness; as likewise all such as communicate with them knowingly after a sufficient prohibition.

[c] All thus excommunicated were deprived of the communion of the faithful, and those faithful who knowingly conversed with them were to be excommunicated by all the laws of discipline that were ever used: but by the council of Lyons in the year 1245, a distinction was made*: and they who were thus guilty of conversing with excommunicates were to be censured with an excommunication of the lesser sort: but if a prohibition were published against conversing with them, then the penalty of the offender was the greater excommunication. See *Sext.*, lib. v. tit. 11. c. 3.

4. And do ye cause the same sentence of excommunication in the same solemn manner to be published against all those who rashly lay violent hands on clerks: and if the iniquity of any proceed so far, as it is feared it may, that prelates, rectors, vicars, or priests of churches, or any other ecclesiastics whatsoever, be taken through occasion of the premisses, or any of them by a lay power, or be kept in prison or custody in any wise, we enjoin you in virtue of obedience (as it was also ordained by the prelates and clergy in the said last congregation) that the places in which [the ecclesiastics] so taken are detained, and the four next neighbouring churches under your district, be forthwith laid under an ecclesiastic interdict, and that they so remain so long as the parties so taken be there detained. And yet farther, let the captors and detainers of them, and they who authorized them, be solemnly denounced excommunicate with the greater excommunication on every Lord's day and festival, after the wicked fact is committed in all churches of your diocese 'at high mass†, before the clergy and people with bells tolling and candles lighted, that the solemnity may be the more dreaded. And that this may come to the knowledge of all, let it be explained in English till the excommunicates be absolved from that sentence by a competent judge ecclesiastical in the form of the Church, after having first made due satisfaction.

5. And because the solemn processions and prayers which we long since ordained to be made throughout every diocese

* [Concil., tom. xxiii. col. 622.] † [inter missarum solennia, S. W.]

for the Holy Land, and for the peace, tranquillity and prosperity of the Church, the king and kingdom, have been negligently [performed] in many [places], and in [others] omitted to the danger of many, as we are informed; from which, if done, great advantage might be expected; and our lord the king of late required by his messengers in the said last congregation, that prayers should be made for him and his in the present expedition which he hath undertaken against the enemies of himself and of the kingdom; and also that we would cause the Scots and their accomplices to be publicly denounced excommunicate throughout our province as who have presumed and do still presume, as they say, violently to invade the churches and ecclesiastical places of the kingdom of England, and to burn them, and sacrilegiously to take away ecclesiastical goods, and openly to infringe the peace of the kingdom and Church of England; we therefore command and enjoin you as before, [to perform] the said processions and prayers for the Holy Land, and the peace of the kingdom and Church of England, as also especially for our lord the king, and such as follow him in his present expedition; as also the denunciations of the excommunications aforesaid throughout your whole diocese at all times and places as ye shall see expedient; and that ye do it in a solemn manner in your own person so far as ye ought; and that ye cause the rest to be done by others. And do ye execute all these particulars with such vigilance and concern, that by this means the state of the Church may be reformed for the better, and that ye may add to the heap of your own merits. Do ye also (so far as concerns you) at all seasonable times cause enquiry to be made throughout your whole diocese, whether the premisses have been observed in manner aforesaid by your subjects. And do ye once a year at least certify us in due manner of what has been done by you and your subjects by your letters patent containing a copy of these presents. Dated at Otteford, sixth ides of July in the year of our Lord 1298, and of our consecration the fourth*.

* [See above, p. 309, note †.]

# A.D. MCCCV.

## ARCHBISHOP WINCHELSEY'S CONSTITUTIONS AT MERTON*.

LATIN. [Lynd., p. 191.] Sir H. Spelman, vol. ii. p. 431. [Lynd., app., p. 34. Wilkins, vol. ii. p. 278†.]

THE provincial constitutions of lord Robert de Winchelsey, archbishop of Canterbury, published at Merton, A.D. 1305, in the thirty-third year of the reign of the illustrious King Edward I., Clement V., who translated his see to Avignon, sitting in the apostolical chair.

1. *This is the same with the second constitution of Walter Gray, archbishop of York,* A.D. 1250: *the most observable variations are there mentioned* ‡.

[Lynd., p. 197.]

2. Because many controversies arise concerning tithes, and the feed of cattle between rectors of churches by reason of the removing of cattle from parish to parish at several seasons of the year; we, desiring to prepare the way of peace, do ordain and decree, that the tithes of wool, cheese, and milk, be entirely paid to those churches in whose parishes the sheep feed and couch for a constancy from shearing-time till Martinmas, [a]in proportion to that time although

* [" In prioratu Mertonensi in comitatu Surriæ." Wilkins, vol. ii. p. 278, note *.]

† [" *Concilium Mertonense. In quo constitutiones provinciales domini Roberti de Winchelsey, Cantuariensis archiepiscopi, editæ sunt.* Ex MS. Cott. Otho. A. 15, collat. cum MS. Lambeth. 17, et MS. Elicu. 235."]

‡ [See above, A.D. 1250. 2. p. 178. After the last words there translated by Johnson, viz., " donec dimidiam marcam argenti archidiacono loci persolverint." Spelman, Wilkins, and Lynd. app. add the following;

De ista materia tangitur " Extra. de officio ord. c. cum ab ecclesiarum;" et quod hic dicitur, dicit canon xvii. q. vii. " Omnes." Et hoc verum est, quod prælati inferiores auctoritate propria possunt excommunicare, nisi consuetudo sit in contrarium, vel nisi inhibeatur per superiorem, et hoc manifeste, ut c. xvi. q. viii. " Omnes." Hoc melius notatur per Jo. ii. q. i. " Nemo episcopus." Et " Extra. de celebratione missarum. c. i. vers. exercere pertineat per W. in Clement." Et quia tangitur supra de decimis personalibus dic. secundum " Host." quod decimæ personales non debent integre solvi. Hoc tenet " Host. de transact." c. " Statuimus vero ecclesiasticum de decimis:" c. in aliquibus per eundem xvi. q. vii. c. " Item quicunque" vers. pridie per archidiaconum ibi et dicas aliis omissis. Contrarium tenet Innoc. de parochiis c. 1. in fine, " Vel erit" super rubrica " de decimis." Dicit tamen Jo. Inno. de reg. jur. c. " qui prior in quarta parte questionis vers. Innocent. quod ratio Innocent. est media." Wilkins, vol. ii. p. 278-9; but see Lynd. app., p. 34-5; and Lyndwood, Provinciale, p. 196, gl. *Suspendantur—Censuram ecclesiasticam—Ad ordinarium.*]

the sheep be afterwards removed and shorn in another parish. And to prevent fraud, we charge in this case, that before the sheep be removed or taken out of their pastures, sufficient security be given to the rectors for paying the tithes; and if within the said space they are removed into several parishes, let each church receive tithe in proportion to the time, no account being had of any space less than thirty days. If for the whole of the aforesaid time they couch in one parish, and feed in another for a constancy, let the tithe be divided between the churches. If after the feast of St. Martin they are carried to other pastures, and till the time of shearing feed in one or several parishes, either in the pasture of their owners, or any others, let the feeding be apprised according to the number of sheep, and let tithes be demanded of the owners according to those apprisements. Let tithes of the milk and cheese arising from cows and goats be paid where they couch and feed: or if they feed in one parish, and couch in another, let the tithes be [b] wholly divided between the rectors. Let lambs, calves, colts, and other decimable younglings be tithed proportionably with a regard to the several places in which they were begotten, born, and fed. We leave to the custom of places what is due where the milk for the small number of the cows or sheep is not sufficient for making cheese; and what for lambs, calves*, colts, fleeces, geese, or such things as are too small to pay a certain tithe. If sheep are killed, or die by chance after Martinmass, let the tithe be paid to the parish church. And if sheep belonging to one parish are shorn in another, let the tithe be delivered to the rector of the parish [where they are shorn] unless it can be shewed that satisfaction hath been made for the tithe elsewhere†.

* [So Lyndwood, p. 199, but Wilkins here omits 'vitulis.']

† [Wilkins gives the latter part of the constitution as below, though Lyndwood, Spelman, and Lynd. app. end it as Johnson:

Si vero per totum tempus prædictum cubant in una parochia continue, et depascantur in alia; rector, in cujus parochia cubant, licet ibidem caseus fiat, decimam casei vel lactis duntaxat percipiet, cum alias ex stercoratione non modicam meliorationem sentiet, et percipiet utilitatem. Quod si post festum S. Martini ducantur ad pascua aliena, et usque ad tonsionis tempus in una vel in diversis parochiis; sive in propriis pascuis dominorum suorum, sive alterius cujuscunque pascantur, habita ratione ad numerum ovium, pascua æstimentur, ut secundum æstimationem pascuorum ab eorum dominis exigatur decima casei et lactis. Si vero per totum illud tempus cubant in una parochia, et pascuntur in alia continue, inter ecclesias decima dividatur.

[a] *Decima lanæ, &c., ejusdem temporis* * *L. et Oxf. ejusdem temporibus.* Sir H. Spelman. It must I conceive be understood as here translated, to make this clause consistent with the rest of this constitution, and with the foregoing constitution.

[b] Not equally, says Lyndwood, for most is due to the parish where they fed †.

3. Because we desire to extinguish the disputes which often happen between rectors of churches and their parishioners, we ordain that if a man at his death have three animals, or more, among his chattels, of what sort soever they be, the second best be reserved for the church where he received the sacraments while alive, the very best being kept for him to whom it is due by law. [Lynd., p. 184.]

4. [c]That the parishioners of every church in the province of Canterbury, may for the future certainly know what [Lynd., p. 251; vol. ii. p. 434. Lynd., app., p. 36. Wilkins, vol. ii. p. 647.]

De vaccis et capris decima proveniens, ubi cubant et pascuntur, ibidem solvatur; alioquin, si cubant in una parochia et pascuntur in alia, decima inter rectores dividatur omnino. Et habita ratione ad domestica nutrimenta, duximus statuendum, ut agni, vituli, et alii fœtus decimales, ubi edunt et nutriuntur, decimentur. Agni vero vituli, et pulli equini, et alii fœtus decimales, habita ratione ad diversa, ubi edunt et nutriuntur, et ad moram, quam traxerint in eisdem, particulariter decimentur.

Item præcipimus, quod si post festum S. Martini oves occiderint, vel si oves quovis casu fortuito moriantur, decimam inde legitimam parochiali ecclesiæ solvere non postponant. Quod si oves extraneæ in alicujus parochia tondeantur, decima lanæ ibidem tradetur rectori ecclesiæ, pro se fideliter conservanda, nisi sufficienter docere possit pro decima facta alibi solutionem ibidem faciendam, modo legitimo valeat impedire. Quid vero pro decima dari debeat, ubi lac propter parvitatem vaccarum vel ovium ad caseum faciendum non sufficit, et pro agnis et pullis equinis, velleribus, aucis, aut aliis hujusmodi, de quibus propter modicitatem eorum decima certa dari non potest, consuetudini locorum duximus relinquendum.

Ad hoc, quia audivimus, quod quidam justitiæ contemptores decimas vicariorum suorum[1] quidam in proprias, in quorum possessione hactenus non fuerunt, manu laicali et armata invadere non formidant; nos ut periculis prædictis obviemus futuris temporibus, auctoritate Dei Patris omnipotentis, et approbatione synodi sacrosanctæ excommunicamus omnes illos, qui de cætero talia perpetrare præsumpserint, ac eorum fautores.

Statuimus etiam, quod prædiales decimæ ibi solvantur, ubi sunt, personales vero, ubi sacramenta recipientur; decimæ pecudum solvantur, ubi pascuntur et aluntur ad lites et contentiones inter rectores ecclesiarum quietandas firmiter statuendo præcipimus, quod, quando oves diversis temporibus anni in diversis locis demorantur, ut est de ovibus, quæ post festum S. Michaelis et ante festum S. Martini ab una parochia ad aliam transmittuntur, et in quinden. vel mens. post Pascha revertuntur, decima agnorum dividitur inter ecclesias parochiales, etiam lana pro rata temporis utrique ecclesiæ persolvatur. Si vero post festum S. Martini transmittantur, et in prædicto tempore, viz. quindena vel mense post Pascha revertantur, medietas decimæ agnorum cum tota decima lanæ, ad ecclesiam, de cujus parochia existunt oves revertatur quam constitutionem sub pœna excommunicationis in nostra provincia præcipimus observari. Wilkins, vol. ii. p. 279. Cf. Lyndwood, Provinciale, lib. iii. tit. 16. p. 197-9; Spelman, vol. ii. p. 432-3. Lynd. app., p. 35.]

* [So Wilkins.]

† [Provinciale, p. 198, gl. *Dividatur.*]

[1] *Forte*, tanquam proprias, W.

repairs belong to them, and they may have no disputes with their rectors, our will is, and we enjoin, that for the future they be bound to find all the things underwritten, that is, a [d]legend, an [e]antiphonar, a [f]grail, a psalter, a [g]troper, an [h]ordinal, a [i]missal, a [k]manual*, a [l]chalice, the [m]principal vestment, with a [n]chesible, a [o]dalmatic, a [p]tunic, and with a [q]choral cope, and all its [r]appendages, a [s]frontal for the great altar, with three [t]towels, three surplices, one [u]rochet, a cross for processions, a [x]cross for the dead, a censer, a lantern, a hand-bell to be carried before the Body of Christ in the visitation of the sick, a pyx for the Body of Christ, a decent veil for Lent†, banners for the rogations, bells with ropes, a bier for the dead, a vessel for the blessed water, an [y]osculatory, a candlestick for the taper at Easter, a font with lock and key, the images in the church, the chief image in the chancel, the enclosure of the churchyard, the reparation of the body of the church within and without, the images, and glass windows, the reparation of books and vestments, as occasion shall be. The rectors and vicars of the places are to repair all the rest, the chancel, and whatever is here omitted, [z]or they to whom it belongs at their own cost‡.

[a] The reader is to know that we have six several copies of this constitution of Archbishop Winchelsey§. I have chosen to follow that of Lyndwood in my translation; yet this differs considerably from that which stands in the edition of this council printed at Oxford; for in this last all the books before the missal are omitted at the beginning, and added toward the end of the constitution, but the manual wholly passed over in silence. After chesible it adds alb, amyt, stole, maniple, girdle, which in this constitution as published by Lyndwood are mentioned only as appendages of the cope. After the censer it adds *cum nave, et thure.* For *osculatorium* it has *tabulas pacis ad osculatorium.* It adds to the rochet the words *sine manicis.* It wants the last clause concerning what is to be

* ["manuale" is omitted in the corresponding copy by Wilkins, though given by Spelman, whose authority alleged in the margin is MS. Cot. Faustina, A. 8. p. 6. Respecting the books and vestments here mentioned see in Johnson's canons, vol. i. A.D. 957. p. 395. notes * and ‡; also A.D. 960. 33. p. 418, and p. 419, note *; Lyndwood's glosses, Provinciale, p. 251-2; Maskell's Mon. Rit. Introduct. Dissert.]

† [pyxidem pro corpore Christi honestam, velum quadragesimale, W.]

‡ [Cætera autem omnia, tam in reparatione cancelli, quam in aliis hic non expressis, secundum diœcesis ordinationes et consuetudines approbatas, a locorum rectoribus et vicariis debent in omnibus reparari sumptibus eorum. W.]

§ [Johnson's translation agrees with the second copy of this constitution, which Wilkins gives vol. ii. p. 280, "ex MS. Cott. Faustina, A. 8. collat. cum MS. Lamb. 17. et Elien. 235," except in the three places noted.]

found by rectors. But there is another copy of this constitution coming after the council of Merton in the Oxford copy, which agrees in the main with Lyndwood; the most observable differences are that it has psalteries and principal vestments in the plural number, and mentions a chrismatory after the pyx; but the title in this copy intimates that some attribute this constitution to Sim. Iselip, whereas Lyndwood positively ascribes it to Winchelsey. Sir H. Spelman has three copies of this constitution, the first is in course in the council of Merton, pag. 433, and agrees in substance with the Oxford copy of the constitution in the said council. The second is in pag. 434, and agrees with Lyndwood's copy, and the second Oxford copy, except where this last differs from Lyndwood. There is a third copy in the same page of Sir H. Spelman which is in the main the same with that of Peckham's; but after "glass windows," it adds pyx and chrismatory. I am humbly of opinion that Archbishop Winchelsey did thrice publish this constitution, first in his provincial visitation, and this was that publication last mentioned: he then enforced it as the constitution of his predecessor Peckham. Secondly, in this council of Merton, in which he made considerable additions to it: thirdly, in some unknown council he finished it, and this finished constitution is glossed by Lyndwood.

[d] Or lectionary containing all the lessons, whether out of the Scriptures, or out of other books that were to be read throughout the year. In the constitution of W. Cantelupe of Worcester, Sir H. Spelman p. 241, the breviary stands for the lectionary: yet some say that the breviary of old was only the rubric of the several offices, which as part gave name to the whole in after times. See Quesnell's Observ. on *Brev. Mont. Cas. in Petit. Theod. Pœnit.**

[e] A book containing all the invitatories, responsories, verses, collects, and whatever was said or sung in the choir, called the seven hours, or breviary, except the lessons. Two of these antiphonars cost the little monkery of Crabhuse in Norfolk, twenty-six marks in the year 1424; Sir H. Spelman says this would make fifty-two pounds according to the value of money in his age: I am of opinion that he laid it too low, and that it would be above eighty pounds, according to the present value of money. By this the reader may make some estimate of the vast charge of books in the ages before printing; and that therefore this was a very heavy expense to the several parishes of the kingdom. See Sir H. Spelman's Gloss. Antiphonar. The common price for a mass-book was five marks, the vicar's yearly revenue.

[f] Grail, gradale, all that was to be sung by the choir at high mass was contained in this book, the tracts, sequences, hallelujahs, the creed, offertory, trisagium, &c., as also the office for sprinkling the holy water.

[g] Troper contained the sequences only, which were not in all grails. The sequences were devotions used after the epistle, in which he that served at mass was obliged to perform his part.

[h] Ordinal was the book in which the method, or manner of performing

* [Theodori archiep. Cant. Pœnit., ed. J. Petit, Paris, A.D. 1677, tom. i. p. 330.]

divine offices was contained, the same I take it with the pie, or portuis, sometimes I conceive called portiforium.

[i] The whole mass-book used by the priest.

[k] Manual is now, I conceive, called the ritual, containing rites, directions to the priest, and prayers used in administering baptism and other sacraments, and sacramentals, blessing holy water; and as Lyndwood adds, the whole service used at processions.

[l] The cup for the wine and water, with a cover, which was the paten.

[m] That is, the best cope for the most solemn holy days*.

[n] The garment worn by the priest next under the cope, which was called also the planet.

[o] The deacon's garment.

[p] The sub-deacon's garment.

[q] That is, a cope not so good as that to be used on festivals, but to be worn by the priest who presided at the saying or singing the hours.

[r] Viz. the alb, amyt, stole, maniple, girdle.

[s] A square piece of linen cloth covering the altar, and handing down from it, otherwise called a pall.

[t] Lyndwood says there ought to be four, and cites for it *de Consecr. dist.* 2. c. 27.

[u] Rochet is a surplice, save that it hath no sleeves, but was for the clerk that served at mass, or for the priest when he baptized children.

[x] To be laid on the coffin, I conceive, or the corpse, when it was brought to the church.

[y] The osculatory was a tablet, or board, (it is *asser ad pacem* in the constitution of Gilbert Sarum, Sir H. Spelman p. 363†,) with the picture of Christ Jesus, the Virgin, or the like, which the priest kissed himself, and gave to the people for the same purpose after the consecration was performed, instead of the ancient kiss of charity. Lyndwood should certainly have added the chrismatory, which was a necessary part of the furniture of every church, and which was the small vessel in which the chrism, or holy ointment for anointing persons in baptism was contained. See the first note of this constitution.

I must add Lyndwood's observation, that the people are obliged to find but one book of each sort, and most particulars are expressed in the singular number, from which he concludes that if more were necessary the incumbent must provide them‡.

It is somewhat strange that here is no mention of organs among the furniture of the church. It is certain they were in use long before this time; Durandus in the former century not only mentions them, but contends for the antiquity of them §, though his arguments do not seem deci-

* [For the correction of Johnson's mistake respecting the cope, see above, p. 177, note ‡.]

† [Rather in Synod. Exon. a Petro Quivil celebr. A.D. 1287. c. 12. Spelman, vol. ii. p. 363; Wilkins, vol. ii. p. 139.]

‡ [Johnson seems to have overlooked the latter part of the gloss to which he refers. See Lyndwood, Provinciale, p. 252. gl. *Calicem*.]

§ [Durandus de Ritibus Ecclesiæ, lib. i. c. 13.]

sive to judicious men. It seems very unaccountable that Thomas Aquinas should declare that the Church had not assumed musical instruments for praises of God, 2æ. Q. 91. A. 2.* I am of opinion he only means that the Church had not established the use of them by any decree, law, or canon: and this may be said of the Church of Rome at this day: even the council of Trent takes no farther notice of them, but only to forbid any thing that was lascivious or impure in the music, either of the organ or voice: and I can find no mention of instrumental music in the whole Corp. Jur. Can. But though the Church had never authorized the use of it, yet clergy and people had by unanimous consent voluntarily taken it up: and it is continued among the protestants as well as among the papists on the same foot. And I conceive it will be impossible to reconcile what is said by Durandus concerning the antiquity of Church music, and the use of it in his time to the affirmation of Aquinas upon any other foot. For these two great writers were for many years alive together, and Durandus was made dean of Chartres the same year that Aquinas died; and therefore he could never have supposed that Church music was ancient, if it had been introduced since Aquinas wrote his Sums. The reason why we know not the beginning, and have no account of the continuance of this, as of other things through the several ages of Christianity, was, that the Church never made any laws or canons about it, but it was taken up and carried on by the tacit approbation of all: if any opposition had been made to it, this would have given occasion for writers to have spoken more largely of it. I would not be understood to mean that what we now call the organ, and which is named *torselli* among the Italians, is of any great antiquity. I readily grant, that this was later than the date of this constitution, and was first invented by Sunatus 1312†. But I see no cause to doubt but other instrumental music, and such as then passed under the name of organ, prevailed long before: but still by permission only, not by injunction. And whatever some antiquarians have said to the contrary, it is certain Clem. Alexandrinus allows of it; and that not only in private, but in the Church. *Pædag.*, lib. ii. c. 4. *versus finem.* And I see no more reason for saying that instrumental music is of Jewish original in the service of God, than that vocal music is so. They both bear the same date. In saying this I plead not the cause of the Church: for she nowhere requires instrumental music; nor do indulge my own temper; for I am perfectly unmusical: but I thought it a piece of common justice to say thus much in behalf of the sons of Jubal.

[Sir H. Spelman in his Glossary has cited the book of Ramsey, sect. iii. [Addenda.]

* [S. Thomæ Aquinatis Summa Theol., tom. v. p. 887. ed. Romæ, 1773.]

† [Marinus Sanutus, seu *Sanudo*, cognomento *Torsellus*, patricius Venetus, Marci filius; in parochia Severi, civitate Rivoalti, Venetiis natus; familiaris et domicellus Richardi cardinalis diaconi S. Eustachii. Germani cujusdam artificis opera usus, organa illa pneumatica, quæ hodie usurpantur, Italice *Torsellos* dicta, primus omnium in ecclesiam induxit: inde datum ei *Torselli* nomen. Claruit anno 1312.—H. Wharton, in Cave, Hist. Lit., vol. ii. Sæculum Wicklevianum, p. 15. This can only be true of a modification of the instrument which the Italians commonly call 'Organo.']

fol. 46, for saying, that on the death of King Edgar, the choir of monks and their organs were turned into lamentations. This seems a fair proof that instrumental music, if not organs, strictly so called, were now in use. If this be not full evidence, yet that of W. Malmesbury is: he tells us that Dunstan in the time of Edgar, gave many great bells and organs to the churches in the west. And he so describes the organs, that they must have been very like ours, viz. *Organa ubi per æreas fistulas musicis mensuris elaboratas dudum conceptas follis vomit anxius auras:* they had brass pipes and bellows; (see *de Vita Aldhelmi*, pag. 33*.) This monk was born within little more than a hundred years of Dunstan's death. He tells us the organ at Malmesbury had an inscription, shewing who was the donor of it. This writer was by a hundred years more ancient than Thomas Aquinas. This then is a demonstration that organs were used in the Church before his time†.]

[z] This is in Lyndwood's text only, who tells us it was intended for such as were neither rectors nor vicars, and yet bound to some things not here expressed, as in case a dying person onerate his heirs with this expense: he observes that in London the parishioners repaired the chancels, and provided lights for the church at their own expense; and that in some places the vicar found only two candles‡.

[Lynd., p. 237. Spelman, vol. ii. p. 436. Wilkins, vol. ii. p. 280§.]

5. Let not [a]stipendary priests, or any other priests who live upon their own, or are maintained by their friends, and now celebrate divine offices in the province of Canterbury, receive any oblations, [b]portions, obventions, [c]perquisites, trentals, or any certain part of them, especially oblations for the [d]bodies of the dead, when present, without the licence of the rectors or vicars of the churches; nor carry them away to the prejudice of the rectors or vicars, or their substitutes, lest they incur the sentence of the greater excommunication [e]already passed¶. And we decree, that such priests be present in the chancel, not the body of the church, churchyard, or fields, at matins, vespers, and other divine

* [ed. Wharton, Anglia Sacra, pars ii. p. 33.]

† [For a drawing of an Anglo-Saxon organ from the Psalter of Eadwine, see Strutt's Antiquities of the English, vol. i. p. 110. pl. xxxiii. fig. 12. Compare Lingard's Hist. of Anglo-Sax. Church, vol. ii. appendix, p. 375-7.]

‡ [Lyndwood, Provinciale, p. 253, gl. *Ad quos pertinent.*]

§ ["Ex MS. Cott. Faustina. A. 8. et MS. Lamb. 17. et MS. Elien. 235. et MS. Oxon. colleg. B. M. Magdal. 112."]

¶ [Lyndwood and Johnson *omit*, et irregularitatem incurrant, miscendo se, ut prius, in divinis. W. The rest of this constitution is in a different order in Wilkins, where the following passage not translated by Johnson is given from MS. Cot. Faustina, A. 8. only:

Item, si oporteat tres vel duas missas die aliquo in ecclesia parochiali celebrari; unam viz. de die, aliam de trinitate pro benedictione nubentium, et tertiam pro defunctis; volumus et statuimus, quod presbyteri ibidem celebrantes juxta assignationem rectoris seu vicarii aut eorum parochialis presbyteri, unam vel duas ex missis eisdem celebrent die illa sine contradictione quacunque. Wilkins, vol. ii. p. 281.]

offices at proper hours in surplices purchased at their own cost. And if they are reproved on this account by the [f] presidents, let them not malapertly lift up themselves against them, or excite others to protect them. And they ought to be enjoined in virtue of obedience to be present at the said hours, and join in reading, singing, and psalmody. Let the said priests on Lord's days, festivals, or when a dead body is there present, begin their masses after the gospel at high mass* is ended; not before, unless they have first asked and obtained leave of the rector, vicar, or other president. Let the said priests on the Lord's day or festival after their admission, swear before the rectors or vicars, or their deputies, at high mass (or otherwise before the ordinaries) 'on the holy [[g] books or relics] lying [h] open, on which they are to have their eyes fixed †, that they will do no damage to the churches, or chapels, or the rectors, vicars, or their substitutes, or to any [i] party concerned as to the oblations, obventions, perquisites, [k] trentals, or other rights, whatever they be, or however called; but that they will to their power secure and preserve them from damage in all and singular the premisses. Let them especially swear not to raise hatred, scandals and contentions, in any wise between the rectors and parishioners; but to their power promote concord between them. We farther will and command that the said priests presume not to celebrate in such churches or chapels till they have been sworn in this form; if the rectors, vicars, or others aforesaid, will and require them to be so sworn: and we decree that if any priest presume to [Lynd., p. 110.]

* [majoris missæ, Lynd.]

† [factis et apertis coram ipsis sacrosanctis evangeliis; W.

The text and glosses of Lyndwood, upon which are founded Johnson's translation of this clause, and his notes upon it, are as below;

Apertis coram ipsis sacrosanctis et inspectis,—

*Apertis.* Hæc dictio innuit sacrosancta, de quibus dicitur infra, talia esse debere quæ claudi et aperiri possunt; ut puta liber, et hujusmodi, et debeat aperiri, ut videre possit jurans qualitatem rei super quam jurat.

*Sacrosanctis.* Non dicit *Evangeliis.* Unde ut videtur sufficit quod sit liber sacer in quo non sint Evangelia; vel quod sit aliqua tabula non clausa in qua sint sacræ reliquiæ repositæ; vel quod ipsa sacra reposita sint forsan in aliquo vase non clauso: ut puta pyxide, cupa, vel arca ad hoc præparata.

*Et inspectis.* Nota, non dicit tactis, sed tantum tria hic ponderat, scilicet quod res super quam juratur sit sacra; quod sit aperta et non clausa; et quod videatur. . . . Corporale juramentum requirit tactum, ut notant *Card.* et alii *Docto.* d. c. *ut circa*, nec sufficit levare manum versus ecclesiam vel altare vel aliam rem sacram. Immo corporaliter debet tangi cum manu si habeat: alias cum lacerto, vel humero, vel capite, non autem cum pede.—Provinciale, p. 110.]

officiate contrary to this prohibition, he do by that means incur an irregularity, besides other punishments which the canons ordain to be inflicted on the violators of constitutions. And if the chaplains aforesaid being so sworn before any competent judge be afterwards convicted by lawful proof of having broken their oath, or being defamed on that account cannot purge themselves, let them be wholly cashiered and interdicted from the celebration of divine offices within our province, as being perjured, till they are dispensed with in
[Lynd., p. 330.] a [l] canonical manner. And we ordain that the said priests do not hear the confessions of the people [m] belonging to the said parishes, or chapelries of the churches wherein they minister *, unless in cases [n] allowed by law: and if they transgress, let them incur the [o] crime of sacrilege, unless they do it by the leave of the president first asked and
[p. 69, 70.] obtained. And let them not be guilty of detraction toward the rectors or vicars of the said churches or chapels, where they celebrate, but behave themselves with reverence and humility. But the said rectors, vicars, and substitutes, ought favourably to receive the said oath; and to keep in their churches a written copy of the premisses, and of other statutes made to this purpose. [p]And they shall not keep taverns, shows, stews, or unlawful games †.

[a] Stipendary priests are such as have no title in the church, says Lyndwood, but are maintained by saying masses, or doing other offices in the church ‡.

[b] That is, a third, fourth or fifth share of the oblations.

[c] Lat. *Denarios pro requestis* §, or *Denarios perquisitos:* both phrases are used in this constitution; the meaning is, pence given for the commemoration of any departed soul, in the offices of the Church.

[d] Meaning, for the souls of the bodies brought to church in order to be buried.

[e] In the council of Oxford under Langton, 1222, constit. i., for such were deemed invaders of ecclesiastical rights: yet Lyndwood is willing to allow them one penny ¶.

* [parochianorum ecclesiarum vel capellarum in quibus divina celebraverint, W.]

† [In Wilkins, after the foregoing constitutions in a somewhat different order, follows, 'Forma juramenti extracta e præmissis,' as in Spelman, but neither Wilkins nor Spelman gives the next constitution, which Johnson makes the sixth, among the constitutions of Archbishop Winchelsey at Merton, and which Lyndwood gives as "attributed and ascribed" to the same archbishop. Compare Spelman, vol. ii. p. 437. Wilkins, vol. ii. p. 281.]

‡ [Provinciale, p. 237, gl. *Stipendarii.*]

§ [So Lyndwood; Wilkins has denarios pro requisitis.]

¶ [*Ullo modo.* Quod tamen sacer-

[f] That is, the rectors, vicars, or their substitutes, that is, the curates.

[g] Lat. *Sacrosanctis*, without a substantive, but I take the additional words from Lyndwood.

[h] Lat. *apertis, et inspectis sacrosanctis.* The Oxford copy has *inspectis, et tactis*, Sir H. Spelman *apertis et tactis coram ipsis.* But both these copies last mentioned are apparently full of mistakes in these constitutions; therefore I follow Lyndwood and Archbishop Courtney's rehearsal of this statute in the Oxford copy, p. 61, who particularly observes that *tactis* is not, or ought not to stand in this text, and that therefore it is not a corporal oath; for the touching the book or relics made it corporal.

[i] The farmers, says Lyndwood, may here be meant*.

[k] What was paid for saying a mass for a soul departed, for thirty days together, or on the thirtieth day only, says Lyndwood †.

[l] By the pope.

[m] Lat. *Parochianorum vel capellanorum* ‡.

[n] That is, at the point of death, when no other priest can be had, or by a papal dispensation, or the incumbent's licence.

[o] This was called sacrilege against an ecclesiastical person, the penalty was excommunication *ipso facto.*

[p] Lyndwood has not this last clause: Sir H. Spelman places it more aptly after reverence and humility, and I once for all observe to my reader, that the series of several clauses in this constitution is not certain §.

6. Holy Church hath ordained that prelates and ordinaries reclaim heretics, and such as are wavering in the catholic faith, to ecclesiastical unity, and compel them to continue in the faith to which they are called. We understand that some parishioners are perverted to heresy and distrust; relinquishing the articles of the Christian faith, opposing ecclesiastical liberties, they impudently attempt to rob the Church of her right, by retaining tithes due by law to the churches, and withdrawing other church dues. And he who does not, when he can, revoke another from error, shews that [Lynd., p. 199. Spelman, vol. ii. p. 502.]

dos celebrans de oblationibus habeat unum denarium, prout observatur in quibusdam locis, non reputo incongruum, maxime de consensu rectoris vel vicarii. Lyndwood, Provinciale, p. 237.]

* [*Quorum interest.* Ut puta, firmariis forsan, vel aliis personis, quæ in obventionibus ecclesiæ certam habeant portionem; quandoque duas partes: quandoque tertiam partem: quandoque mediam partem; prout in multis ecclesiis observatum est: quarum talem et ego quondam obtinui, et de obventionibus quibuscunque ad infra vel ad extra pertinentibus et venientibus ad eandem, non recipiens nisi tertiam partem; quibusdam religiosis viris duas partes obtinentibus, ibid. p. 111.]

† [*Tricennalia.* Id est trigintalia. Solent namque aliqui facere celebrari triginta missas secundum certum ordinem institutum, ut dicitur per Beatum Gregorium. Solvuntque aliquod certum celebranti pro suo labore. Vel dicuntur *Tricennalia*, ea scilicet quæ obveniunt in solennitate diei tricesimi. Ibid.]

‡ [So Lyndwood, p. 330.]

§ [The series of the clauses is the same in Wilkins as in Spelman.]

he is not himself free from it: when therefore the Church, and the rectors of churches, do not force such sons to pay their tithes, they destroy both their sons and themselves. * Whereas therefore by the command of Holy Scripture tithes are to be paid of all things yearly renewing without any diminution, without excepting any time, it is therefore allowed to every parish chaplain to compel his parishioners to pay tithes by ecclesiastical censure. Therefore we on account of the daily defects and malice of men command you all by virtue of obedience, that ye diligently admonish, and effectually persuade, or that every one of you in your several parishes, cause your parishioners to be persuaded, entirely to pay the tithes hereunder mentioned; that is to say, tithes of milk from the time of its first renewing, and in the month of [q] August, as well as in all other months, of the profit of woods, mast, trees if sold, parks, fish, stews, rivers, ponds, [r] fruit of trees, cattle, pigeons, seeds, fruits, [s] beasts in warrens, fowling, gardens, [t] court-yards, wool, flax, wine and grain, turfs, where they are dug and made, swans, [u] capons, geese, [x] ducks, eggs, hedge-rows, bees, honey, wax, mills, what is caught by hunting, handicrafts, [y] merchandise; as also lambs, calves, colts, according to their values. And let competent satisfaction be made for the profits of all other things to the churches whereunto they belong by law; no deductions being made on account of paying tithes, excepting only in handicrafts and merchandise. And if men out of contempt do not obey their monitions, let them compel them to the payment of them by the sentences of suspension, excommunication, and interdict.

[q] Upon what pretence the people pleaded exemption from paying tithe of milk in August, Lyndwood does not inform us †. Probably it was be-

* [Compare the remainder with Conc. Prov. Ebor., Wilkins, vol. iii. p. 604, quoted below, A.D. 1466. 11.]

† [Lyndwood's text is, "scilicet decimam lactis a primo tempore suæ novationis tam mense Augusti quam aliis mensibus:" and he refers to his glosses on a previous constitution of Archbishop Winchelsey, Provinciale, p. 194, where he fully explains the matter, by stating that the tithes of milk and cheese were never to be paid at the same time, lest the same produce should be tithed twice; but that cheese, if made as usual in spring and summer, should be tithed, and not the milk, the latter produce being subject to tithe in autumn and winter, when cheese was no longer made. The mention of August in the above constitution was doubtless to meet the case of those who left off making cheese before the end of summer, and might claim exemption from paying tithe of milk till the beginning of September.]

cause this was the principal harvest month, and men thought it too much to pay tithe of milk, while they were paying tithe of corn, and fed their harvesters with the milk.

[r] Here Lyndwood has trees only, and by this word understands trees of the longest growth, and labours to prove that such tithes ought to be paid *.

[s] Wild beasts, says Lyndwood, and affirms tithes of them to be due, if they are kept, or guarded †.

[t] Where herbs and flowers grow ‡.

[u] The Oxford copy adds peacocks.

[x] In our parts, says Lyndwood, tithe is paid both of the eggs and gulls of ducks §.

[y] Here Lyndwood takes pains to prove that the farthing paid for every ten shillings of yearly rent in London on every Sunday, and holyday that had a vigil, was not intended as a composition for personal tithes, or as a tithe of their merchandise, which therefore he affirms to be due over and above the said farthings ¶.

N.B. It is not necessary to suppose that all these six constitutions were made in the same council, nay, it is probable they were not.

* [*Arborum.* Etiam grossarum. . . . De lignis debetur decima . . . lignum proprie sumptum dicitur quod ad comburendum, non ad ædificandum, disponitur: sed satis constat multas grossas arbores non valere ad ædificandum, sed potius ad comburendum: ergo si tales arbores prosternantur, debet de eis solvi decima.—Lyndwood, Provinciale, p. 200. The corresponding words in the parallel passage of Archbishop Nevill's constitutions are, 'arborum prostratarum et excisarum.' See Wilkins, vol. iii. p. 604.]

† [*Bestiarum guarenarum.* Sc. ferarum bestiarum, quæ sunt sub custodia certorum custodum positæ, ut patet in saltibus, forestis, parcis et aliis locis ad nutriendas feras bestias deputatis . . . Dicitur guarena a guardia quæ idem est quod custodia.—Provinciale, p. 200.]

‡ [*Curtilagiorum.* Vulgare est non omnium patriarum, sed certarum. Est enim *curtis* mansio, vel manerium ad inhabitandum cum terris, possessionibus, et aliis emolumentis ad tale manerium pertinentibus. . . . Unde curtilagium dicitur locus adjunctus tali *curti*, ubi leguntur herbæ, vel olera: sic dictus a *curtis*, et *lego legis* pro colligere, ibid.]

§ [*Anatum.* Horum aliqui non solvunt decimas sicut nec de pullis gallinarum, eo quod de ovis solvunt decimam. Consuetudo tamen in partibus meis habet contrarium, ut sc. tam de ovis, quam de pullis solvant decimam. Et hæc consuetudo est valde rationabilis propter incrementum inde proveniens; vel istud intelligi potest de anatibus feris. ibid.]

¶ [Cf. ibid. p. 201. gl. *Negotiationum.*]

## A.D. MCCCVIII.

### ARCHBISHOP WINCHELSEY'S CONSTITUTION.

Some excerpta concerning matrimony taken from the synod holden at [a]Winchester, A.D. 1308, by Robert Winchelsey, archbishop of Canterbury, extant in the Oxford copy only.

[a] There is no mention of this council, or of the following excerpta any where, to my knowledge, but in the Oxford copy of the provincials.

[Lynd. app., p. 37. Wilkins, vol. ii. p. 283*.]

We forbid [b] abjurations of such women as have been corrupted by fornication for the future†. But let the offenders be bound with an oath, that if hereafter they confess or are convicted of having been guilty of a relapse, they will without contradiction submit to a corporal punishment to be determined by the discretion of the president, due consideration being had of the condition and circumstances of their persons. But if they have incurred that punishment, and are convicted, or do confess that they have relapsed a third time, then let the man and woman contract in this form, "I do from this time forward take thee for my wife, if I shall hereafter carnally know thee:" and let the woman answer, "I also take thee from this time forward for my husband, if I shall hereafter be carnally known by thee." And that what has been done in such cases may more certainly be known, we charge that this form of contract be drawn up in writing:

* ["A.D. 1305. *Constitutio domini Roberti Winchelsey archiepisc. Cantuar. de abjuratione concubinarum.* Ex MS. coll. Omn. Anim. Oxon."]

† [Abjurationes autem fornicariarum sub pœna pecuniaria fieri prohibemus omnino, W.]

and we charge that this form of contract be duly observed without contradiction, as in true contracts*.

[b] It should seem it had been the practice of ecclesiastical judges in case of conviction for simple fornication to oblige both parties to abjure familiarity with each other for the future: but this, as might easily have been foreseen, proved inconvenient, therefore instead of forswearing each other's company, they were to promise on oath quietly to submit to corporal punishment, in case they should be convicted a second time. But the punishment of the third conviction was a mutual contract, on condition they offended the fourth time. This was done upon supposition that such a contract was to one of the parties at least, a greater punishment than bodily smart: and it may be so no doubt in many cases. And a conviction of a fourth relapse does sufficiently shew that one or both parties thought marriage a greater punishment than any penance that the court could enjoin. A neighbouring nation suspected by none for want of wit make matrimony the punishment of fornication, in case an impregnation be the consequence of it.

* [In Wilkins follow these words; Adde ad istam constitutionem etiam de eo, qui duxit in mulierem, quam polluit per adulterium.

In Lynd. app., p. 37, the addition is thus given:

Adde ad istam constitutionem *Extra. de eo qui duxit in uxorem quam prius polluit per adulte. c. significavit. per B. et alios Doctores.*]

A.D.

## SUPPOSED CONSTITUTIONS OF ARCHBISHOP REYNOLD.

[Wilkins, vol. ii. p. 675*.]

THERE is in Sir H. Spelman, vol. ii. p. 488, &c., a collection of eight constitutions attributed to Walter Reynold, archbishop of Canterbury; but the main of them are indeed the constitutions of John Stratford, archbishop of the said province†.

1. The first is the fifth extravagant of Archbishop Stratford, in which he cites a constitution of Simon Mepham, who succeeded Walter Reynold in the archbishopric, and therefore could not make constitutions to be cited by his predecessor.

The second is part of the sixth extravagant of the said John Stratford.

3. The third is the third extravagant of John Stratford, save that no provision is made for the official if he induct the clerk.

4. The fourth is the second extravagant of John Stratford curtailed.

[Spelman, vol. ii. p. 491. Wilkins, vol. ii. p. 677.]

5. The fifth I find nowhere else, and it contains somewhat particular, and therefore my reader shall have it here.

It[a] is the complaint of many that secular judges and others make an objection of [b]bigamy against clerks when they are taken and imprisoned for their crimes, and demand to be

* [*Concilium provinciale Cantuar. in quo constitutiones Johannis Stratford, archiepiscopi Cantuar. editæ sunt.* Ex MS. Cotton. Vitellius A. 11. fol. 92. b.

To the foregoing title Wilkins adds this note:

MS. codex Cottonianus constitutiones has Waltero Reynold, archiepiscopo Cantuar. attribuit. Ast non ab ipso, sed Johanne Stratford arch. Cantuar. promulgatas fuisse exinde constat, quia sub initio constitutionum mentio fit S. archiepiscopi Cantuar. prædecessoris sui et hunc Simonem Mepham fuisse (qui Johannis Stratford decessor fuerat) ex constitutionum ejus capite v. cujus contenta hic citantur, aperte patet. Clar. Spelmannus codicem Cotton. secutus, anachronismum xx. annorum in collocandis constitutionibus commisit. Wilkins's date is A.D. 1341.]

† [Compare Spelman, vol. ii. pp. 488, seq. 572, seq.; and see below, A.D. 1342—3.]

sent to the ecclesiastical court; and so usurping and unduly executing a cognizance of this case by a jury of laymen, they stick not to hang clerks; 'although the cognizance and trial of bigamy ought to belong to the ecclesiastical court, as depending on the validity of matrimony; since the secular court cannot judge of matrimony, and such matters as receive their effects from matrimony, as dowry, and bastardy*. Farther, he who marries a [c]widow, or two women, oftentimes does not contract bigamy according to them, and they do not esteem some to be bigamists who really are so†. Sometimes also clerks, though neither caught in the fact, nor convicted, are taken by a lay power and kept in gaol as criminals, or suspected of crimes, or personal injuries, and not resigned to their ordinaries when they demand to have them freely tried according to the canons; by which ecclesiastical liberties are confounded while clerks are judged by laymen; and they sentence men for a fault who are perfectly ignorant of it: therefore we ordain that if such as affirm themselves clerks being taken and imprisoned on the account that bigamy is objected against them, or if other clerks found in possession of their [d]clerkship are imprisoned, that then the detainers of them who refuse to resign them at the request of the ordinaries be publicly denounced excommunicate. Let the cities, castles, vills, and places of our province, where clerks have been condemned to death on account of bigamy, and in which clerks being detained have not been delivered at the request of the ordinary, and the lands of the detainers, suffer ecclesiastical interdict till they are surrendered to their ordinaries, and competent satisfaction be made by their proceedings in the premisses. Let such as contrive and charge clerks with feigned imaginary crimes, for which they are taken and unjustly detained, be publicly denounced (as they are) excommunicate.

[a] It is probable this was only a rough draught never enacted, or else it hath met with miserable transcribers: for it is without any proper syn-

'* [quamvis bigamiæ, quæ ex matrimonii dependet viribus, cognitio, et discussio ad forum Ecclesiæ, debeant pertinere, cum de matrimonio, et hiis, quæ sumunt ab ipsis efficaciam, ut in causa dotis et bastardiæ curia secularis utitur, secularis potestas nequeat judicare. W.]

† [Johnson *omits*, Sicque falleus laicos oculorum judicium, ipsos cogunt æstimare bigamos, 'qui nunquam contraxerant bigamiam. S. W.]

tax, especially as to the former part of it, though the sense is not very difficult.

[b] A clerk that had successively married two wives, lost all his privilege by the canon law. Therefore the secular judges thought they might safely treat such as laymen, but this could not be borne.

[c] He who married a widow or a corrupted maid was a bigamist according to the canon law, or rather was treated as a bigamist: our temporal courts did not allow of this.

[d] That is, tonsure and clerical habit.

6. The sixth is the first extravagant of John Stratford, with some alterations, which the reader shall have in their proper place.

7. The seventh is the seventh extravagant of the said John Stratford, but curtailed.

8. The eighth is the eighth extravagant of the said John Stratford, with small variations. The following constitutions are not in Sir H. Spelman.

## A.D. MCCCXXII.

### ARCHBISHOP REYNOLD'S LATIN CONSTITUTIONS.

LATIN.

THE provincial constitutions of the lord Walter Reynolds, archbishop of Canterbury, published in the second council holden at Oxford, A.D. 1322, in the sixteenth year of the reign of King Edward II., John the First, alias two and twentieth, being pope. [Lynd., p. 33. ] Sir H. Spelman, vol. ii. p. 498*. [Lynd. app., p. 39. Wilkins, vol. ii. p. 512†.]

1. How reverently, contritely, and devoutly men should go to the sacrament of order is shewn by this, that it is conferred by none but the high-priest, that is, the bishop, and at certain places and times, with fasting, not only by such as are to be ordained, but by all the people: therefore regarding the canons, we forbid any to come or be admitted to orders without canonical examination. Let no lesser clerks be admitted to the inferior degrees, unless they have proper [a]presenters, and upon their testimony let them be admitted. Let no simoniac, manslayer, excommunicate, usurer, sacrilegious person, incendiary, falsary, or any one under a canonical impediment presume to go into any orders whatsoever; nor let him in anywise be presented or admitted to them. Let not 'such as have been ordained in Ireland, [b]Wales, Scotland, or elsewhere, without letters commenda- [Lynd., p. 47.]

* [Sir H. Spelman gives the first, third, fifth, seventh, eighth, ninth, and tenth of the above constitutions as the constitutions of Archbishop Simon Mepham at a council of Lambeth. See below, A.D. 1330. 1—6.]

† ["*Constitutiones provinciales domini Walteri Reynold, Cantuar. archiepiscopi, editæ in concilio Oxon. Anno Dom.* MCCCXXII. Ex Lyndw. Provinc. append. p. 39, seq."

To the foregoing title Wilkins adds this note:

Constitutiones has alio tamen ordine dispositas, ac paululum aliunde auctas, ex MS. Cott. Otho, A. 15, fol. 133 b, Simoni Mepham archiep. Cantuar. adscripsit clar. Spelmannus; quas et MS. Lambethense, n. 17, eidem archiepiscopo acceptum refert. Codex Eliensis n. 235, autem Stephano (Langton) archiep. Cantuar. attribuit. Lyndwoodus, ejusque commentator Johannes de Atona a Waltero Raynold, archiep. Cantuar. eas editas esse asserunt, quorum opinionibus subscribens ad A.C. MCCCXXII. collocavi.]

tory or dimissory from their own ordinaries*, be admitted by any one within our province to officiate unless in case of great necessity; and that even they be dispensed with by a [c] sufficient authority, or their order so taken be ratified by the ordinaries. Provided, notwithstanding, that they be in no wise admitted without good evidence of their having been ordained, and of their good life and learning. And we charge that priests unknown[d], that have no evidence of their ordination, be not admitted to celebrate divine offices in churches without the [e] licence of the diocesan bishop, after they have given sufficient assurance of their ordination by letters testimonial, or by the testimony of good men. And we enjoin [f] abbots and priors not to cause their monks and canons to be ordained by any other bishop except the diocesan, unless it be done with the letters dimissory of the bishop, or of his vicar-general in the bishop's absence.

[Lynd., p. 32.]

[a] Proper presenters of secular clerks are the archdeacons; of regulars their abbots, priors, &c. Lyndwood †.

[b] Sure the archbishop had forgot that Wales was part of his province.

[c] That is, by the pope, his legate, or the bishop. Lyndwood.

[d] Though they were ordained, and even born in the diocese where they dwelt. Lyndwood in this page gives it for law, and proves it by authorities, that a man well known and of good fame, who hath long been reputed to be in orders, shall not be obliged to prove his ordination by letters, or any other evidence ‡; and our common law at this day says the same.

[e] For in other cases the bishop's licence was not necessary, nor is at this day, to qualify a man to celebrate divine offices, but only to preach or be a curate, *et exceptio firmat in non exceptis.*

[f] Lyndwood acknowledges that exempt houses of monks and religious were not bound by this constitution §.

[p. 34.] 2. Let priests often exhort the people to have their children confirmed: for that sacrament ought to be received after baptism. If the person to be confirmed be [g] adult, he is to be admonished by the priest of the place first to go to confession, and then to be confirmed: and let him come

* [Item ordinati in Hibernia, Wallia, vel Scotia maxime sine literis sui diœcesani, et nostris commendatoriis seu dimissoriis, W.]

† [*Idoneos.* Videlicet archidiaconos, vel alios ad hoc per ordinatorem deputatos. Provinciale, p. 33. Cf. ibid. gl. *Præsentatores.*]

‡ [Provinciale, p. 47-8. gl. *Constiterit.*]

§ [Ibid., p. 32. gl. *Loci diœcesano.*]

fasting to confirmation in honour to that sacrament. And let parents be often admonished by the priests to carry their baptized children to the bishop for confirmation; and not stay long for the coming of the bishop, but carry them to him when he is [h]in the neighbourhood as soon as may be after baptism: and carry [i]fillets sufficiently large along with them. And let the children on the third day after confirmation be carried to the church, that their foreheads may be washed in the [k]baptistery by the priest's hand in honour to the chrism; and at the same time let the fillets be there burned. [l] Let no child be held at confirmation by its father or mother, stepfather or stepmother. And our will is, that this prohibition be often published in the church by the priests, that parents and others who hold children at confirmation, may know that a spiritual relation is contracted at this sacrament as well as at baptism. Let parents take great care that they do not a second time offer their children to be confirmed; because the children, if males, are by the repetition of the sacrament made [m]irregular, and the parents by such neglect are [n]by the canons liable to severe punishment. [Lynd., p. 40.]

[g] Adult, that is, fourteen years of age. Lyndwood *.

[h] Within seven miles, says Lyndwood.

[i] To bind the forehead, and dry up the chrism with which the bishop anointed the child †.

[k] Not in the font, says Lyndwood, nor with baptismal water, but in the place where the font stands, and with water provided for that purpose.

[l] The reason of this was, that by the canon law the spiritual affinity contracted between the suretics and the baptized did not only obstruct marriage not yet contracted, but dissolved marriage already contracted and consummated: you have a remarkable proof of this, *causa* xxx. *dist.* 1. c. 1, yet this was mollified by Pope Boniface the Eighth, as you may see, *Sext.*, lib. iv. tit. iii. c. 3, so that marriage not yet contracted only was dissolved by such consanguinity. Yet this it should seem was not come to the knowledge of the present archbishop though done

* [*Adultis*, i. e. Major 14. annis; pro cujus intellectu nota quod sex sunt ætates hominis. Prima infantia, et terminatur in septimo anno, secunda dicitur pueritia, et terminatur in 14. anno. Tertia dicitur adulta ætas sive adolescentia et terminatur in 28. anno, vel. 25. anno secundum jura. *Pandect. de mino. l. 4. in fi.* Quarta dicitur juventus: et terminatur in quinquagesimo anno. Quinta est ætas senilis, i.e. gravitas: et terminatur in 70 anno. Sexta est senectus, quæ nullo annorum termino finitur. Senium vero est ultima pars senectutis: et terminatur in morte secundum, *Isid.*—Provinciale, p. 34.]

† [Ibid., p. 34-5, gl. *Fascias.—Ligaturas.*]

twenty-four years before, viz., A.D. 1298, or else the archbishop was willing to remove all scruples that superstitious men might raise upon this account.

[m] That is, incapable of benefice or orders without dispensation.

[n] Lyndwood owns himself ignorant of any such canons *: and indeed the irregularity incurred by the child baptized seems only to have been a harsh construction of an unreasonable canon, that one twice baptized, though ignorantly, should not be admitted to orders. But certainly the present archbishop was the most cruelly rigid and superstitious of any man that ever sat in this chair, and this constitution contains as great proofs of it as well can be imagined.

[Lynd., p. 36.] 3. Let the sick man's oil be carried with great reverence to the sick, and let the priests anoint them with great devotion, and with the celebrity of prayers provided for this purpose. And let the priests of the Lord often exhort the people, that is, all that are fourteen years old and upward, to receive extreme unction, [°and let them shew themselves ready to give it to all without distinction, when there is occasion†.] And let them be informed, that after the receiving of this sacrament, they may, if they recover, return again to the conjugal duty: [[p]and let the holy oil and chrism be kept safely under key, that no profane hand may reach [p. 41.] it for horrible purposes‡.] And let them teach the people that the sacrament of extreme unction may be received again after one year be past and gone; that is, once in one year, in [p. 36.] grievous sickness when there is a fear of death. This sacrament is necessary, as appears from the words of St. James, ch. v. 14, 15§.

° This is not in Lyndwood, though the last words seem necessary to complete the sense.

[p] Lyndwood has omitted this also. The horrible purposes were no doubt, sorcery, witchcraft, &c.

[p. 52.] 4. Let rectors of churches and priests be diligent in what concerns the honour of the altars, especially when the holy

* [Provinciale, p. 41. gl. *Secundum canones.—Ultioni.*]

† [et ad omnes communiter se paratos exhibeant; cum necesse fuerit, W.]

‡ [Item tam sanctum oleum, quam chrisma sub fideli custodia, clave adhibita, conservetur ut non possit ad illa temeraria manus extendi ad horribilia, W.]

§ [dicentis: "Si infirmatur quis ex vobis, inducat presbyteros ecclesiæ, et orent super eum, unguentes eum oleo sancto in nomine Domini, et oratio fidei salvabit infirmum, et alleviabit eum Dominus; et si in peccatis sit, dimittentur ei." W.]

body is there reserved, and mass is celebrating; let the holy eucharist be kept in a clean pyx of silver, or ivory, or otherwise as befits the sacrament. Let not the host be reserved above seven days after consecration, but be renewed every week: and let it be carried with reverence by the priest, or in case of extreme necessity by the deacon, 'with a [q]light and lantern going before*; unless the distance of place or the shortness of time forbid this. And let the ministers so behave themselves going and coming that the sick man have the office duly performed to him, and they who hear and see them be invited to pay due reverence to the sacrament; [r]and let archdeacons provide that the linen cloths, and other ornaments of the altar, be decent, and that the church have books fit for reading and singing, and [s]two suits of priest's vestments at least; and that due regard be paid by all to divine offices: and we charge that they [t]who tend at the altar be clothed with [u]surplices†.

[q] And a cross, as in the margin of the Oxford copy.

[r] Here Lyndwood begins his text of this constitution.

[s] One for Lord's days, the other for week days. Lyndwood.

[t] They that serve the priest at mass, or the priests themselves when they do not celebrate, but come only to do something in relation to the sacrament there reserved. Lyndwood‡.

[u] Lyndwood did not remember that he ever read of this garment in the whole body of the canon, or civil law, nor (as he adds) in the Holy Scripture. But Durandus the elder mentions it, and he lived about a hundred and

'* [tam luce (MS. cruce) quam lucerna præcedente, Lynd. app., p. 39.
tam cruce quam lucerna præcedente, W.]

† [Præcipimus etiam, ut, qui altari ministrat, superpellicio induatur, Lynd. W.]

‡ [*Altari ministrat.* Videlicet presbytero celebranti assistens. Et idem in missæ tempore ministrans. Vel potest intelligi de sacerdote quovis tempore accedente ad altare, ut aliquid faciat, vel disponat circa Corpus Christi; ut viz. illo tempore sit indutus suppellicio. Et juxta communem intellectum dic suppellicio, i. e. veste linea ad talem usum præparata. De qua tamen veste non memini me legisse in toto corpore juris canonici vel civilis, nec etiam in sacra scriptura: fit tamen de eo mentio *infra. de ecclesi. ædi. c. ut parochiani.* Et potest significari per tunicam lineam, qua induebantur filii Aaron in veteri lege, *de qua legitur Exod.* 28 *ad fi.* Sed æstimo quod proprie suppellicium est indumentum de pellibus confectum: sed in nostro communi usu intelligitur ut prius dixi. Provinciale, p. 53. Compare the foregoing gloss of Lyndwood with the following canons and notes in Johnson's former volume: A.D. 960, 33, p. 418, note **, and in the same set of canons made in King Edgar's reign, c. 46, p. 421, note *. It should be remarked that Lyndwood is somewhat at fault in his conjecture as to the derivation: superpelliceum does not mean a garment 'de pellibus confectum' (made of skins,) but worn super pelliceam, next over the pelisse or garment lined with fur, as were the common garments of the eleventh century. See Rock's "Ch. of our Fathers," part i. c. vi. sect. 1, 2.]

thirty years before Lyndwood; he says, that they who tended at the altar used it; and farther speaks of it as a laudable custom, that in some places the priests wore an alb or surplice under his amyt, which last was commonly reckoned the undermost missal garment. See Dur., lib. iii. c. 1, 2.

[Lynd., p. 235.]

5. Let the linen cloths, corporals, palls, 'and other altar-cloths* be whole and clean, and often washed by [x]persons assigned by the canon for this purpose, out of regard to the presence of our Saviour, and of the whole court of heaven, which is undoubtedly present at the sacrament of the altar while it is consecrating, and after it is consecrated. 'Let the words of the canon be fully and exactly pronounced, and with the greatest [y]devotion of mind; with an especial regard to [z]those [words] which concern the holy sacrament. Yet let not the priest through affectation make the office nauseous to the hearers, and take away the marrow and fatness of their devotion, for dead flies destroy the sweetness of the ointment†. Farther, let no parish priest celebrate mass till he hath finished matins, prime and undern‡: and let no clerk be permitted to attend at the office of the altar without a surplice: and let two candles, or one at least, be lighted at the time of high mass. [And we forbid any

'* [tuellæ, manutergia et alia altaris ornamenta, Lynd. app., p. 40. W. p. 513. Johnson here follows the text of Lyndwood, Provinciale, p. 235.]

† [Verba Canonis in his præsertim quæ ad sanctum sacramentum pertinent, plene, integre et cum summa animi devotione proferantur. Non tamen sit ita morosus sacerdos in præmissis, quod fastidium ingerat auditoribus, et officium suum privet devotionis pinguedine quia muscæ morientes perdunt suavitatem unguenti, i. e., pinguedinem devotionis. Lynd.

*Devotione.* Ut sc. mentis intentio firmiter applicetur ad Deum, et ad pronunciationem verborum. Intentio namque semper est necessaria, vel specialis, vel generalis; et non solum requiritur intentio consecrantis, sed etiam intentio istud sacramentum Instituentis.—

*Morosus*, i. e., Tardans.

*Præmissis*, i. e., Pronunciatione verborum Canonis.

*Fastidium.* Tædium.

*Auditoribus.* Qui ut plurimum solent ex prolixitate orationis, vel alias officii divini anxiari; cum tamen brevis oratio, facta cum animi devotione, melior sit quam oratio prolixa cum anxietate cordis.—

*Officium suum.* Quod sc. consistit in spirituali ministerio et diligenter est exequendum. 12 *di. de his.* Hic tamen intelligit principaliter de officio missæ, in quo debet quilibet sacerdos summe esse devotus.

*Devotionis pinguedine.* Quæ esse debet in conscientiæ puritate et fervore spiritus quoad Deum.

*Quia muscæ.* Ponitur ratio mystica præcedentium: et intellige per *muscas* cogitationes immundas, quandoque occurrentes tempore divini officii, quæ quidem cogitationes corrumpunt devotionem, sicut et muscæ corporales corrumpunt suavitatem unguenti: et sumitur hoc de scriptura, *Eccles.* X. Lyndwood, Provinciale, p. 235-6. Compare above, A.D. 1200-1, p. 84, and in vol. i. A.D. 747. 12, p. 248.]

‡ [Tertiam de die. Lynd. W.

*De die.* i. e. Festi quod celebratur illo die.—Provinciale, p. 236. See in vol. i. A.D. 957. 19, p. 393 †.]

priest, who has committed mortal sin, to go to the altar to celebrate before he goes to confession: nor let him think, as some do by mistake, that mortal sins are blotted out by the [a]general confession.]

[x] Deacons, or other ministers, says Lyndwood. The canon law permits the sacred furniture to be handled by none but such as are in orders. *De Consec. dist.* i. c. 41, 42.

[y] Lyndwood by this understands the intention of the priest, which he affirms to be necessary to the consecration.

[z] I conceive that the words *Hoc est corpus, Hic est sanguis,* &c., here are meant, though this is incommodiously expressed.

[a] Which general confession is publicly made by the priest at the introit to the mass, at prime, and compline; but it avails only for venial sins, says Lyndwood. This clause is not in the Oxford copy *.

6. Let archdeacons and their ministers be very careful in observing what is above said concerning the reverence to be paid to sacraments, as also in what follows, by coercing transgressors in proportion to their crimes. We enjoin archdeacons and their officials 'in their visitations of churches [[b]to cause the vessels, vestments, books, and other things belonging to the said[c] offices to be written down and†] have a special regard to the fabric of the church, and especially of the chancel; and that they fix a certain time for the supplying such defects as they find therein under some [d]penalty; and let them make enquiry by themselves, and such as belong to them, whether there be any thing to be corrected either as to things or persons in the parish where they perform the office of visitation: and let such excesses be corrected either at that time, or at the next chapter. [Lynd., p. 53.]

[b] This is not in Lyndwood.

[c] Viz., of the sacraments.

[d] Here Lyndwood speaks of churchwardens, as bound to the reparation of churches‡: and this is, I suppose, the earliest proof of it. He inti-

* [See Lyndwood's statements at length, Provinciale, p. 236—7, gl. *Confiteatur—Confessionem generalem.*

The clause in brackets is given in the next column of the same page 40 of the appendix to Lyndwood which Johnson calls the Oxford copy, as also in Wilkins, vol. ii. p. 514, and is found in two places of the Provinciale, pp. 236, 334. See below, c. 9. p. 342.]

† [ut in visitationibus ecclesiarum faciendis diligenter ascribi faciant vasa, vestimenta, libros et alia, quæ ad dicta pertinent officia, Lynd. app., p. 40. W.]

‡ [Sed nunquid, guardiani ecclesiæ ad hujusmodi reparationem faciendam, et alias ad bona ecclesiæ disponenda electi, possunt per pœnam hujusmodi sc. excommunicationis, vel suspensionis, aut per pœnam aliam, compelli

mates that the penalty was for the most part pecuniary; but withal says that such parishioners as refused to contribute might be personally excommunicated: these churchwardens first were chosen to take care of cows, sheep, and other bequests given for the repair of the church, and finding lights: it was long after this before they were obliged to present offenders.

[Lynd., p. 271.] 7. Let matrimony be celebrated as other sacraments with reverence, in the daytime, and in the face of the church, without laughter, sport, or scoff. 'Let the priests while the marriage is contracting, interrogate the people [e]under pain of excommunication by three public banns concerning the [f]immunity of the bridegroom and bride, on three Lord's days or festivals[g] distant from each other*. If the priest neglect these banns, let him not escape the [h]punishment lately enacted in the general council. [1]And let priests often forbid such as are disposed to marry to [i]plight their troth any where but in some notable place[2] before [[k]priests or] public persons[3] called together for this purpose[4], under pain of excommunication†.

[e] That is, I conceive, threatening those who knew a lawful impediment and concealed it, with excommunication; but "under pain of excommunication" is not in Lyndwood.

[f] That is, their being free or disengaged, as to all others; the Oxford copy has it *de legitimatione sponsi, &c.*, and this is a more comprehensive word, implying not only an immunity, but being of lawful age, not too nearly related, &c.

[g] Lyndwood says it is sufficient that the festival days be distinct from each other, or three several days (so that the banns be not published twice the same day), as for instance, says he, on Monday, Tuesday, and Wed-

ad reparationem de qua hic dicit. Æstimo quod si sufficienter habere possunt unde (*al.* habeant in manibus, vel eorum diligentia sufficienter habere possunt unde, &c.) fiat reparatio hujusmodi, tunc si circa hoc negligentes extiterint, possunt per censuram ad hoc compelli. Alioquin si per eos non steterit, non esset contra eos sic procedendum. Provinciale, p. 53. gl. *Sub pœna.*]

'* [In matrimonio quoque contrahendo semper tribus diebus Dominicis vel festivis a se distantibus, quasi tribus edictis, perqûirant sacerdotes a populo de immunitate sponsi et sponsæ. Lynd.

*Immunitate.* Id est, libertate, hoc est, an sint liberi ad contrahendum. Lyndwood, Provinciale, p. 271.

In matrimonio contrahendo semper in tribus dominicis, vel festivis diebus, et a se distantibus, tribus edictis perquirat sacerdos a populo sub pœna excommunicationis, de legitimatione sponsi et sponsæ. Lynd. app., p. 40. W.]

† [Item prohibeant laicis sacerdotes frequenter in ecclesia sub pœna excommunicationis, ne dent mutuo fidem de matrimonio contrahendo, nisi in loco celebri, et coram presbyteris et laicis pluribus ad hoc convocatis. Lynd. app., W. Johnson's translation agrees with Lyndwood's text, Provinciale, p. 271, the glosses upon which are given in the next page, note §.]

nesday in Easter or Whitsun-week, for Wednesday was then a festival in both those weeks *.

[h] Three years' suspension from office inflicted by the Lateran council, 1216, c. 51 †.

[i] The contract or espousals in this age differed from the solemnization of marriage ‡.

[k] Priests are not mentioned by Lyndwood: A contract in *præsenti* was absolutely obliging, as it still is, if made before any two good witnesses, and Lyndwood by 'public persons' understands two such witnesses in any public place §. Yet the contract or espousals were regularly to be first made, or however before solemnization renewed before the priest; and there was an office for this purpose. Our espousals and solemnizations are now put into one office.

8. Let the priest in enjoining penance diligently attend the circumstances of the crime, the quality of the person, the nature, time, place, and cause of the sin, and the time of continuing in it, and the devotion of the penitent; and having diligently and distinctly considered all these particulars let him enjoin the penance. And let the priest choose such a place in the church for hearing confessions as is open to the view of all; and never take the confession of any, especially of a woman, in secret, unless in case of necessity, or on account of the sickness of the penitent. Let not one priest admit the parishioner of another to confession, without the licence of his proper priest or bishop. Let the priest enjoin such penance to the wife, as may not make her suspected of any grievous secret crime by her husband; the same is to be observed in relation to the husband. Let not the priests enjoin penance for theft, robbery, fraud, and especially for withholding or subtracting tithes, or of any [Lynd., p. 331.]

* [*A se distantibus.* Ad minus ut videtur uno die intermedio. Et facit ad hoc quod legitur et notatur *de sent. excommuni. c. constitutionem. li.* 6. sed puto quod si tres dies festivi successivi concurrant, sicut contingit in hebdomada Paschæ et Pentecostes, sufficit, quod singulis trium dierum hujusmodi banna edantur.—Provinciale, p. 271.]

† [Concil., tom. xxii. col. 1038.]

‡ [See in vol. i. A.D. 946. *per tot.* p. 369, 370.]

§ [[1] *Contrahendo.* Loquitur itaque de sponsalibus, quæ sunt de futuro . . . vel potes intelligere de matrimonio celebrando, i. e., in facie Ecclesiæ solennizando: sic tamen quod contractus ipse matrimonialis præcedens publice sit initus, ut hic dicitur.

[2] *Loco celebri.* Id est a multis frequentato, sive solenni et aperto (*al.* apto): sic quod in latebris non fiat.

[3] *Publicis.* Ut puta, tabellionibus. Vel dic *publicis*, i. e., palam et in publico præsentibus.

*Pluribus*, duobus ad minus.—

[4] *Ad hoc.* Id est, ad audiendum contractum talem fieri, et inde testificandum. Et nota quod si secundum hanc constitutionem non debeant contrahi sponsalia de futuro, nisi palam et publice coram testibus, qui velint et valeant

ecclesiastical right* without causing restitution and satisfaction to be made to the persons injured: for the sin is not forgiven till what hath been taken away is restored. When the priest is under any doubt in gross and atrocious crimes, let him consult the bishop, or his substitute, or provident discreet men, by whose advice he may certainly know whom to bind, whom to loose, and in what manner. But lest the penitent should fall into despair, which God forbid, let him be in the mean time admonished to do all possible good, 'that God may direct his repentance†. Let the same be done as to him who confesseth his sin, and yet will not abstain from it, in which case absolution cannot be given, for we never read of pardon conferred on any without reformation. And let priests beware that they do not enquire of their penitents concerning the sins [of other men] or the names of the persons with whom they themselves sinned; but only the circumstances and quality of the sin: because it is written, [1] "I have declared unto Thee, O God, mine own life," and not another man's: and confession ought to be of what belongs to ourselves, not to others.

[1] Ps. lv. (with us lvi.) 8, according to the vulgar Latin. It is in our English, "Thou tellest my flittings," or wanderings.

[Lynd., p. 236 et 334.]

9. [m] Let no priest who hath committed mortal sin‡, &c., *as in the last clause of the fifth constitution.* And let no priest in any case out of hatred, anger, or fear even of death, discover the confession of any man by signs, nods, or words, either in general or particularly, and if he be convicted of this, let him be [n] degraded without any hopes of reconciliation.

[m] Lyndwood glosses twice on this, viz., p. 236 and 334.

[n] This crime was punished not only with degradation or deposition by

in ea parte testimonium perhibere, multo magis hoc fieri debet quando per verba de præsenti contingit contrahi matrimonium: cum in sponsalibus de futuro de consensu partium possit resiliri a tali contractu, et in aliis casibus. . . sed in matrimonio contracto de præsenti non.—Lyndwood, Provinciale, p. 271.]

'* [Item in furto, rapina, usura, fraude, simonia, et maxime detentione decimarum, seu subtractione alicujus juris ecclesiastici. Lynd. app. W. Johnson follows Lyndwood's text, Provinciale, p. 332.]

'† [ut Deus cor suum illustret ad pœnitentiam, Lynd., p. 333; app., p. 40. W.]

‡ [Lynd. app. and Wilkins insert this clause at this place only: see above p. 339, note *.]

the old canon law, but with a disgraceful pilgrimage, *causa* 33, *quæst.* 3. *dist.* 6. c. 2. But the council of Lateran, 1216, turned the pilgrimage into a monastic life, c. 21 *.

10. Whereas it often happens that rectors of churches, [Lynd., p. 335.]
° priests, and others in the holy orders, either do not at all go to confession, (or else confess to those who have no authority to bind or loose them,) upon pretence that they are subject to no man in the court of conscience, we ordain that one or more idoneous priests of competent learning and good reputation be appointed ᵖin every deanery throughout every archdeaconry to hear the confessions of such, and to enjoin them penance; 'and our will is that they be authorized for this purpose by the diocesan of the place, or his deputy†. And we firmly forbid the religious, monks, canons, anchorites, or hermits, to admit the subject of another to penance.

° Lyndwood supposes that they were such as lived in noblemen's houses, which had chapels belonging to them, where the curate of the parish had nothing to do, or in places privileged to choose their own confessors.

ᵖ Here I follow Lyndwood; the Oxford copy has *per archidiaconos singulorum decanatuum.*

There is in Sir H. Spelman, p. 487‡, an ordination, as it [Postscript.]
is called, of this archbishop directed to his sons, the official of the court of Canterbury, and the dean of the arches, intimating that he had formerly visited his court of Canterbury, but not yet found time to reform the corruptions then detected: he observes that when a rector was sued in that court concerning the right of possession of his benefice, or the like, the fruits of the benefice were wholly sequestered and converted by the presidents, that is, I suppose, the judges, to their own use, and the defendant, though in possession by law, disabled from maintaining his cause and self, and often reduced to beggary: therefore he ordains that for the future sequestrations be used in no cases but what are expressly

* [Concil., tom. xxii. col. 1010.]

'† [quibus per nos, vel vicem nostram gerentem auctoritatem volumus impertiri, Lynd. app. W. Johnson follows the text of Lyndwood, Provinciale, p. 336.]

‡ [Wilkins, vol. ii. p. 497.]

allowed by law, or evidently allowable, and the fruits kept not for the use of the presidents, but of him who carries the cause, or appears to have a right to them; and that a sufficient portion be assigned to the defendant for the defence of his cause and his subsistence: he lets them know that he intends a thorough reformation.

Here my reader will observe that archbishops by their own personal authority regulated all matters relating to their courts. It is well known that the last archbishop, Robert Winchelsey, drew a body of statutes containing fourteen pages in folio, for the better management of his court of Canterbury, which is now united to the court of the arches. They are extant in Sir H. Spelman, p. 413, &c.*

* [Wilkins, vol. ii. p. 204; cf. ibid., p. 409.]

## A.D. MCCCXXVIII.

### ARCHBISHOP MEPHAM'S CONSTITUTIONS.

LATIN. Sir H. Spelman, vol. ii. p. 493. [Lynd. app., p. 41. Wilkins, vol. ii. p. 552*.]

THE constitutions of the venerable father Simon Mepham, archbishop of Canterbury, in a provincial synod celebrated at St. Paul's, London, in the month of February, the Friday after the conversion of St. Paul, A.D. 1328, in the third year of the reign of King Edward III., John the twenty-first or twenty-second and Nicolas the fifth being pontiffs at once, from whence proceeded the twenty-sixth schism.

It concerns prelates of the Church to have a zeal for the Lord their God, (who are to be damned not only with a personal perdition, but the Lord will require at their hands the blood of their subjects,) especially against those who are honoured with the name of Christians, and yet contradict their profession by their damned works; so as to root out by the sword of the Spirit and the hoe of ecclesiastical discipline, all hurtful vices, and graft virtue, and reform manners, so that evil appetites may not exceed the bounds of honesty, but that the Christian profession may be advanced with a salutary increase. To this end we, Simon, by divine permission archbishop of Canterbury and primate of all England, in the name of the holy undivided Trinity, Father, Son, and Holy Ghost, have by the authority of this present council, and with the consent of our suffragan brethren, thought it necessary to confirm the ecclesiastical state in our province of Canterbury, by adding punishments for the preservation of statutes formerly published by councils, and by ordaining some new ones, by which the [evil] living of offenders may be restrained, and their salvation promoted.

* ["*Concilium provinciale Cantuar. in quo constitutiones domini Simonis Mepham, Cantuariensis archiepiscopi, editæ apud S. Paulum London. anno Dom.* MCCCXXVIII. Ex MS. Cott. Otho. A. 15. col. cum MSS. Lamb. 17. Elien. 235. et Bodlei. Digby, 81."]

[Lynd., p. 99.] 1. Desiring to provide for the salvation of souls, we take rise from the fountains of Him that is the Author of it: therefore we enact and ordain that that holy day of preparation, in which our Saviour, after being scourged, deposited His precious soul upon the cross for the salvation of men, be celebrated as a [a]festival according to the rites of the Church, in reading with silence, in prayer with fasting, in compunction with tears; [b]and we forbid that any attend their servile works on that day, or be employed in any business inconsistent with piety. [c]Yet we do not hereby lay any law upon the poor; nor forbid the rich to yield their customary assistance to the poor in tilling their lands for charity's sake.

[a] Lat. *festive* *. Id est, ad instar diei festi. This is strange solecism to us, but Lyndwood expresses no wonder at it.

[b] Here is no mention of a mass to be celebrated: and I think this is the only day in the year in which the Church of Rome allows of no mass. They administer the communion upon this day, but *ex præsanctificatis*, in hosts consecrated the day before †.

[c] Lyndwood seems to countenance the opinion that husbandry and servile works were forbidden only on Lord's days, and our Saviour's festivals, and those of the Blessed Virgin, and of the Apostles Peter and Paul; but by this constitution servile work was not absolutely forbid on Good Friday, which yet was to be kept as a festival of Christ.

[p. 101.] 2. [d]Farther, that the memory of the blessed Virgin Mary, the mother of our Lord, may be oftener and more solemnly celebrated, in proportion to the greater favour which she among all the saints hath found with God, who ordained her conception to be the predestinated temporal origin of His only-begotten Son, and the salvation of all men; that by this means the remote dawnings of our salvation which raise spiritual joys in pious minds, might increase the devotion and salvation of all; following the steps of our venerable predecessor [e]Anselm, who after other more ancient solemnities of hers thought fit to add that of her conception, we ordain and firmly command, that the feast of the conception aforesaid be solemnly celebrated for the future in all the churches of our province of Canterbury.

* [So Lynd. app. and Wilkins: the other Latin words given by Johnson are the gloss of Lyndwood, Provinciale, p. 100.]

† [See in vol. i. Elfric's canons, A.D. 957. 37. p. 404, note *.]

[d] The preface to the foregoing fits this better than that.

[e] That an archbishop of Canterbury should by his own authority institute a new feast is not credible; nor is there, I conceive, any evidence that a provincial synod ever did this. It is true, every bishop before the Reformation had power of ordering what holy days he pleased, over and above those ordered by the provincial councils, to be kept with solemnity; but they were only such holy days as were before authorized by the see of Rome. Anselm might first introduce the feast of the conception here in England, I mean as to the solemn observation of it. But it is evident this was known to be a holy day several hundred years before. The council of Toledo, A.D. 694, c. 1*, complains of the uncertainty of the day, and fixes it to the eighteenth of December, (it is now on the eighth.) Both protestants and papists say that the feast of the conception was instituted by Sixtus the Fourth, A.D. 1476 or 7, yet his bull (*Extrav. com.*, lib. iii. tit. 12†) says no such thing, but only enjoins the service lately composed for that day by Leonard de Nogarolis to be observed, and grants indulgences to them that attend it. So the feast of the Annunciation is commonly said to have been instituted by Boniface the Ninth about the end of the fourteenth century; yet it is expressly mentioned in the said chapter of the same council of Toledo, which was seven hundred years before, and was certainly observed in England before ever Boniface the Ninth was pope. Yet it may be allowed that Sixtus the First instituted the feast of the immaculate conception: for the ancients did not give it that epithet, though Anselm (as Lyndwood observes) seems to favour the notion of the Blessed Virgin's being conceived without original sin.

3. We also declare by the authority of this council that the violators of ecclesiastical liberty and immunity incur the sentence of the greater excommunication *ipso facto* already passed in[f] the council of Oxford, who take away, consume, or lay hands upon any thing, or cause to be taken away, consumed, or hands to be laid upon any thing belonging to the houses, manors, granges, or other places belonging to archbishops, bishops, or other ecclesiastical persons, without the will or permission of the owners, or their stewards; or who take upon themselves to justify the taking away, consuming, or laying hands on such things, done in their names, or by those of their family. And lest such violators of ecclesiastical immunity should, as they have hitherto used to do, evade the proceedings against them by means of the difficulty of serving summons upon them; we decree with the consent and advice of our brethren and of the whole council, [Lynd., p. 85.]

* [Tolet. x. c. 1. Era 694. A.D. 656. Concil., tom. xi. col. 34.]

† [c. 1. p. 316. ap. Corp. Jur. Can. The date there given is A.D. 1466.]

that such a violator be personally cited, if he can personally be found, and safe access can be had to him. But if he cannot be found, or access to him be not safe, then that he be cited [g]at his house, if he have one, 'to which there is safe access*; but if he cannot safely be cited at his house, [h]then that he be cited in the parochial church to which his house belongs; but if he have not, or be not certainly known to have any house, then in the cathedral church of that place where the violation of immunity was committed: and we decree the citation also to be made in the parish church of the place, if it can be done with safety. And our will is, that a citation thus publicly made at his house or in the church, do as much bind the party cited (not only in the cases before mentioned, but in all cases in the constitution of lord Othobon, which begins with these words, [i]"The immunity of the Church") as if he had been personally apprehended; and that proceedings may be against him by virtue of such a citation as effectually in all respects as if he had been cited in person. 'And we decree that such and all other violators of ecclesiastical liberty may be convened in the place where the fact was committed, either *ex officio*, or at the instance of a party, although they are not [personally] found†: and our will is, that when it is doubtful whether the said violators can be found, or safe access can be had to them, or not, it be determined by the certificate of him to whom the mandate of citation is directed; and that in the cases aforesaid, and all others, the injured parties may the more easily obtain justice, we with the approbation of this provincial council, strictly[k] charge that all ordinary judges of the province of Canterbury do without making any difficulty give their mutual assistance to each other in making citations and executions and in executing all lawful mandates.

[f] See the first constitution of the council held by Stephen Langton, 1222.

[g] Lat. *in domicilio*. But Lyndwood justly observes that it can signify

'* [quo tute citari possit, Lynd. W.]

'† [Præfatos etiam, et quoscunque alios ecclesiasticæ libertatis vel immunitatis violatores, decernimus in loco delicti, etiamsi ibidem non inveniantur, posse tam ex officio judicis, quam ad partis instantiam conveniri. W.]

no more than at or near the place of his habitation: for this is said upon supposition that it is not safe to enter into his house, or that his person is not to be found.

[h] Here Sir H. Spelman's copy is defective, and the Oxford faulty; therefore I follow Lyndwood.

[i] See the twelfth constitution of Othobon, 1268.

[k] Lyndwood will scarce allow that *præcipimus* here carries any commanding power with it, except when the primate or some superior command an inferior*: and it can scarce be conceived that one bishop could command any one in his diocese to appear before the bishop of another diocese.

N. B. That all this care and provision is made in a case where the party was *ipso facto* excommunicate, and therefore was cited only to hear the excommunication pronounced against him with solemnity.

4. And let them be restrained by sentence of excommunication, who contrary to the custom of England hitherto allowed, do obstruct the testaments or last wills of [l]villains appertinent to lands, or of any other of a servile condition.

[l] There were two sorts of villains; the first seem to have been absolute slaves; the others were predial servants who were bought and sold, or passed by inheritance, not singly and personally, but as appendages to the houses and lands which they occupied, and for which they were bound to do certain services; and were subject to all sorts of corrections from their landlords, so they did not maim them; and they could not change their conditions without the will of their lords; and these lords claimed the disposal of their goods when they died; against this last this constitution was made.

5. And because ordinaries of places do aggrieve such executors by difficulties of their own making in order to extort money from them on account of the [m]insinuation of their wills, or committing the administration of their goods; we ordain that nothing at all be demanded for the insinuation of the testament of a poor man, the inventory of whose goods does not exceed [n]one hundred [o]shillings sterling. [Lynd., p. 170.]

[m] That is, the opening and publishing them before the ordinary; he does not forbid taking money for registering, &c.

[n] Lyndwood would have it that this should be understood according to the imperial solidus, then it makes 23*l.* 3*s.* 0¼*d.*

[o] Here Lyndwood affirms that the old English penny had a bird called a sterling impressed in one of its quarters. This hath been called "a childish conceit†;" but Lyndwood might have seen such pence, though the calum-

* [Lyndwood, Provinciale, p. 90. gl. *Juvent.*]

† [By Bp. Kennet in the glossary at the end of "Parochial Antiquities."]

niator never did *. Lyndwood further says that twenty-six pence made an ounce in Archbishop Mepham's time, but when Lyndwood wrote, thirty-two :
[Addenda.] [it is scarce credible that Lyndwood should know the precise weight of these sterling pieces, unless he had seen and weighed them, or at least received his information from them that had :] yet he will not allow that the hundred shillings are to be computed according to this variation. Hence nothing less than a hundred shillings are allowed to be *bona notabilia*. See Lyndwood, p. 174, 175 †.

[Lynd., p. 115.] 6. A certain statute is said to have been put forth in the [p]council of Oxford, in which among other things it is forbid frivolously to appeal from any judicial grievance before definitive sentence, and that advocates and proctors should be laid under an oath to observe this statute, and be [q]otherwise punished according to the statute itself if they transgress it; now we do wholly lay aside this statute, and whatever has been done in consequence of it as being made for depriving the oppressed of the remedy of appeal, though coloured over with specious pretences: and we [r]absolve all those from their oath who are sworn to the observation of it.

[p] We have in this volume the constitutions of two councils holden at Oxford, the first under Stephen Langton, 1222, the other under Robert Winchelsey, 1322; yet I find no such constitution in either of these councils; nor does Lyndwood mention any such statute in his gloss ‡.

* [Lyndwood, Provinciale, p. 171. gl. *Centum solidos.*

Walter de Pinchbeck, who was a monk of St. Edmundsbury in the reign of Edward I., says, when describing the mode of coinage which was then used, "sed moneta Angliæ fertur dicta fuisse a nominibus opificum, ut floreni a nominibus Florentiorum, ita sterlingi a nominibus Esterlingorum nomina sua contraxerunt, qui hujusmodi monetam in Anglia primitus componebant. Antiq. S. Edmundi Burgi, Appendix, p. 134, quoted in Ruding's Annals of the Coinage, vol. ii. p. 14. The foregoing may perhaps be reconciled with Lyndwood's statement, by supposing that the Esterlings or their successors used a star or starling as a token. For the various derivations which have been suggested of the word sterling see Ruding, p. 15, note h.]

† [gl. *Laicis.*]

‡ [Lyndwood explains that the statute in question was made in a synod of the diocese of Oxford, and not in a provincial council: upon the text, "In concilio Oxoniensi quoddam dicitur emanasse statutum," he has the following clear and important statements, which Johnson seems to have overlooked:

*In concilio.* Ista constitutio fuit Simonis Mepham, et habet duas partes principales. In primo recitative ponit unum statutum editum in diœcesi Oxoniensi.

*Concilio.* i. e. Synodo. Episcopi namque in suis diœcesibus faciunt *synodos*, metropolitani vero *concilia*.—Quandoque tamen congregatio facta per episcopum dicitur *concilium*.—

*Statutum.* Potest enim episcopus in sua diœcesi statutum facere, quo ligari debeant sui subditi . . . et tale statutum dicitur canon episcopalis . . . nota tamen, quod contra canones non potest episcopus aliquid statuere.—Lyndwood, Provinciale, lib. ii. tit. 7. p. 115.]

[q] Perhaps, says Lyndwood, by a punishment assigned in the statute: this, I think, shews that he knew not the words of the statute*.

[r] That is, we declare them absolved, says Lyndwood, for he supposes the oath unlawful, and therefore not binding.

7. Because some sons of malediction endeavour to restrain [p. 185.] the devotions of the people at solemnizations of marriage, purifications of women, offices for the dead, and upon other occasions (when God in the persons of His ministers uses to be honoured with the oblations of His people) to a penny, or a small pittance of an offering, and often apply the residue of the oblations to the use of themselves or others; and some, not considering that the Almighty, to whom belongs the earth and its fulness, hath commanded tithes to be paid as a sign of His universal dominion, and hath assigned them to the clergy for His own service, do sometimes maliciously hinder, or cause to be hindered, the ecclesiastical persons to whom they belong, or their servants in their ingress and egress to and from their farms from which the tithes arise, in order to their [s]collecting, keeping, and carrying away the said tithes: and others carry away and consume, or cause to be carried away and consumed, or damage to be done to such tithes unless gloves or shoes be first given, or promised them†: we therefore, desiring to put a stop to such damnable devices of perverse men, ordaining nothing new, but enforcing the statutes of [t]ancient canons, do by authority of this council declare every such instigator, hinderer, and others aforesaid, by whose wicked contrivances damage is done to the churches, or to the rectors or vicars of them, or any accustomed honour or profit is withdrawn from them, and all such as offend in any of the premisses, for the future to be [u]involved in the sentence of the greater excommunication; and we reserve the absolution of them to the diocesan of the place, not to be given till by their counter-endeavours the devotion of the people be effectually restored to the churches, and full satisfaction made to the ecclesiastical persons injured by these excesses.

* [*Affligendi.* Forsan pœna limitata in statuta, alias arbitraria. Ibid. p. 116.]

† [Johnson, following the text of Lyndwood, *omits*, Alii insuper viros ecclesiasticos, ea occasione, quod jura ecclesiastica in foro ecclesiastico prosequuntur, vel ante ea fuerint prosecuti, malitiose attachiant, indictant, vel judicant, attachiari, indictari judicarive, aut eis alia gravamina inferri faciunt vel procurant: W. p. 553—4. Lynd. app., p. 42.]

[t] Lyndwood observes, that in some places by custom the tenth sheaf of the corn was to be taken; but shews that by the canon law the owner was bound not only to gather the tithes and lay them in a heap, but to carry them to the parson's barn, *caus.* xvi. *quæst.* 1. c. 65, 66.

[u] Laymen were forbid to take offerings, *caus.* x. *quæst.* i. 3, ult. cap.

[v] Lyndwood inclines that this is a sentence *lata*, not *ferenda;* but then he proves it from the canons against violation of ecclesiastical liberties, and attributes much to the custom of the place*.

A canonist has put a note at the foot of this constitution in the Oxford copy, by which he proves by the civil law, that at the rector's request the farmer may be forbid to carry away his corn, unless in the presence of the rector or his assign; and he adds this reason for it, that the rector by having a right in the fruits has a right in the soil; for the fruits, says he, are a part of the soil. Our common lawyers deny this.

[Lynd., p. 273.] 8. Because inconveniences have happened, and do daily happen from contracts of matrimony made without preceding publication of banns; we straightly charge all and singular our suffragans, that they cause the decretal, [x]Whereas the prohibition, &c. (by which it is forbid, that any contract of matrimony without [y]banns first published in every parish and diocese to which they belong on several solemn days when the greatest number of people is present), to be explained in the vulgar tongue, and firmly to be observed, by inflicting the penalty of [z]suspension from office for three years on all priests, whether they belong to those parishes or not, who presume to be present at marriages contracted before solemn publication of banns, and due punishment on those who do so contract marriage, although there be no impediment. And let every priest whether regular or secular, who dares celebrate, or be present at the solemnization of marriage anywhere save in the [a]parish church, without the special licence of the diocesan, be suspended from his office for a whole year.

[x] That is, the fifty-first chapter of the Lateran council, 1216†, inserted into the *Decretal.*, lib. iv. tit. 3. c. 3.

[y] Lyndwood's text is *Bannis non præmissis in singulis ecclesiis parochialibus suæ diœcesis*, and so the Oxford copy‡. This intimates that banns should be published in every church of the diocese, but this is more than the decretal requires, therefore I follow Sir H. Spelman, who has it

* [Cf. Lyndwood, Provinciale, p. 187, gl. *Involvi.*]

† [Concil., tom. xxii. col. 1038.]

‡ [So also Wilkins.]

*in singulis ecclesiis parochialibus, sive diœcesibus.* And I am apt to think that Lyndwood's original text was to the same purpose: for in his gloss he tells us that banns ought to be published where the parents or kindred live, as well as in the places where the parties contracting have their abode*: this would be an excellent law.

[z] This implies suspension from benefice, says Lyndwood.

[a] Where the bride, or bridegroom, or their friends live, must here be supplied: the whole constitution is carelessly expressed.

Lyndwood has the times pretendedly forbidden in his gloss both on this and the foregoing canon, of which *Cler. Vade Mecum*, part i. p. 200†.

9. We ordain that no [b]inquisition for the future to be made concerning the defects of houses, or [c]other things belonging to ecclesiastical benefices be of any availment to the prejudice of another, unless made by credible persons sworn in form of law; the party concerned being first cited to this purpose. Let the diocesan cause the entire sum taxed for the reparation of the houses, and other things found to belong to ecclesiastical benefices, whether by inquisition or composition, to be converted to the reparation of the said defects within a competent time to be fixed by his discretion‡. [Lynd., p. 253.]

[b] Lyndwood says the ordinary might do this *ex officio*§, but if done at the instance of a party, then the inquisition was to be more exact.

[c] Viz., books, vestments, &c., especially the chancel, if the benefice was a rectory or a vicarage bound to repair the chancel.

* [Cf. Lyndwood, Provinciale, lib. iv. tit. 3. p. 273, gl. *Solennem editionem.*]

† [Compare Clergyman's Vade-Mecum, part i. p. 207—210. Johnson's English Canons, vol. i. A.D. 785. 16. p. 276. Lyndwood, Provinciale, p. 274, gl. *Solennizationem.*]

‡ [Wilkins here appends the following note:

"His constitutionibus clar. Spelmannus ex MS. Cott. Otho A. xv. subjungit alias, quas ex Lyndwoodo, ejusque commentatore Johanne de Atona edocti, Waltero archiepiscopo Cantuar. adscriptas, ad annum MCCCXXII. collocavimus. Reperiuntur etiam constitutiones illæ in MS. Lamb., n. 17, et MS. Elien. 235, sed in illo Simoni (Mepham) in hoc Stephano (Langton) archiep. Cantuar., attribuuntur." Conc. Brit., vol. ii. p. 554, note *.]

§ [Provinciale, p. 253-4, gl. *Inquisitio.*]

## A.D. MCCCXXX.

### SUPPOSED CONSTITUTIONS OF ARCHBISHOP MEPHAM.

Sir H. Spelman, p. 497, has ten constitutions attributed to Simon Mepham, of which a man may justly doubt whether he was any wise concerned with them: they bear no date, and therefore the year which I have prefixed is only to distinguish these from the former: three of them I have translated; because I find them no where else: the six foremost are the constitutions of Archbishop Reynold.

1. The first is the fifth constitution of Reynold.
2. The second is the eighth of Reynold.
3. The third is the ninth and tenth of Reynold.
4. The fourth is the third of Reynold.
5. The fifth is the seventh of Reynold.
6. The sixth is the first of Reynold*.
7. Let no [a]layman pawn or sell the sacred vessels or vestments, either to Jews or Christians; nor let out, infeoff, or otherwise alienate the possessions of the Church; unless urgent necessity and manifest utility require it, and the consent of the diocesan bishop be thereunto given. If any act contrary to this, let him revoke what he has done at his own cost. Let him who thus accepts and detains any ecclesiastical benefices be smitten with sentence of excommunication, and not be absolved till he makes restitution*.

[a] The laymen affected by this canon were probably the patrons of monasteries, or religious houses, and perhaps of parish churches, or such noblemen as had the guardianship of the temporalities of any bishopric or abbey granted them by the king: this was the reason why no sentence is here passed, but barely that of revocation. Archbishops were now grown more modest than in the reign of Henry the Third.

* [See last note from Wilkins; above, A.D. 1322; and Wilkins, vol. ii. p. 512.]

8. Many presume to build houses on a lay fee not only for their sons and nephews, but even for their concubines, and lay out their ecclesiastical revenues upon them; and so treasure up unto themselves the wrath of God and eternal damnation by hoarding up the goods of the Church for their kindred. We strictly forbid this to be done for the future; and ordain that he or they who do it without licence of the diocesan, be suspended for a year at least from receiving the fruits of their benefice; unless they make satisfaction upon the admonition of the bishop or archdeacon. And let no clerk farm out an ecclesiastical benefice to a layman, nor sell his tithes before they are separated. If any clerk in an allowed case will commit his benefice to another, we ordain that it be committed to such an one who is able and willing to uphold the buildings belonging to the church, and to bear other episcopal and archidiaconal [b]burdens. And let him who accepts of another man's benefice be presented to the archdeacon and [c]chapter of the place, and be fully instituted as general procurator to that benefice for the time there agreed between them*.

[b] Procurations, pentecostals, and perhaps pensions.

[c] The clergy of the archdeaconry quarterly assembled were the archdeacon's chapter.

9. Part of the thirty-first of Edmund, beginning at, "Farther we strictly forbid," &c.

10. We charge that three or four times in every year, sorcerers, and such as have sworn falsely on holy [books or relics], incendiaries, usurers, atrocious thieves, robbers, falsaries, such as maliciously oppose the execution of reasonable testaments, and detainers of tithes, be solemnly excommunicated in general, and not absolved, nor enjoined penance by any one inferior to a bishop or his vicar-general, except at the point of death, and then let them be enjoined to go to the bishop to receive penance from him or by his authority, if they recover.

* [This and the preceding constitution are attributed to Archbishop Langton. See Wilkins, vol. i. p. 590. Conc. Oxon., A.D. 1222. c. 29, 30, also p. 596. "*Stat. legenda in Conc. Oxon.*"]

## A.D. MCCCXXXII.

### SUPPOSED CONSTITUTIONS OF ARCHBISHOP MEPHAM.

[Wilkins, vol. ii. p. 560.]

THERE are three more and very long constitutions attributed to this archbishop in Sir H. Spelman, p. 500, &c. But,

1. The first is clearly the last of Simon Islip. This is dated from Mayhfield in Sussex, sixteenth calends of August, that of Archbishop Islip the seventeenth of the same calends, this A.D. 1332, that 1362, both of them run in the "thirteenth year of our consecration," whereas Mepham sat not half so long. But their having both the same name (Simon) caused this confusion.

2. The second is the fifth of Archbishop Winchelsey*.

3. The third is the sixth of Archbishop Winchelsey. I have been willing to suppose that these constitutions were several times re-inforced, and so bear the names of the several archbishops who gave them a new sanction; but the fraud or the blunder is so visible in the first of these three, that I can say nothing with probability.

* [See above, A.D. 1305, 5; Wilkins, vol. ii. p. 280.]

## A.D. MCCCXXXVI.

### SETTLEMENT OF PROCURATIONS.

I JUDGE it seasonable here to intimate to my reader, that about the year 1336, Pope Benedict the XIIth. published a bull for the settling of procurations, or a composition in money for them. Sir H. Spelman hath given us a very defective corrupted copy of it; that in *Extrav. Com.* lib. iii. tit. 10† is more perfect and correct. I have, to avoid prolixity, given my reader a table of such compositions only, as were to be paid to the several visitors, in the several countries subject at that time to the pope, for any religious house that had fewer than twelve persons belonging to it, or for any parochial church. By which the reader will see how disproportionable these compositions were. The sums taxed were the utmost that the visitors were to demand; the visitors are charged to accept less from poor churches, and not to exceed any stated composition already fixed by ancient custom. And it was farther provided by this bull that the charitative subsidies then often demanded by prelates of their clergy, should not exceed that composition for procuration, which was to be paid by the incumbent when the prelate visited by deputies: therefore I have set before my reader the sums to be paid to such deputies here in England.

LATIN. [Sir H. Spelman, vol. ii. p. 503. Wilkins, vol. ii. p. 578*.]

The turons were twelve to the floren, as the pope tells us by his bull, and he adds, that he meant the golden floren coined in Florence. I am not sure what this was, but Spelman from Caius informs us that twelve turons made four shillings and four pence‡; and this seems to have been the true value of the English floren, till Edward the Third, now

* ["*Constitutio super procurationibus visitantium per Benedictum papam* xii. *edita circa annum Dom.* MCCCXXXV. Ex MS. Cott. Vitellius, A. 2. fol. 95 b, et Extrav. com., lib. iii. cap. de censib. exaction. et procurat."]

† [p. 304, ap. Corp. Jur. Can., tom. iii.]

‡ [Johnson is here misled by Spelman, who misquotes from Kaye; the words of the latter are, "Turonensis nummi 12. faciebant 3. sol. 4. denarios."—J. Caii Hist. Cantab. Acad., lib. ii. p. 123. ed. London. 1574. Cf. Spelmanni Glossarium, art. Turonensis nummus.]

reigning, coined new ones of six shillings value, about the year 1344. But at this rate the archdeacon's full procuration in England would have been 17*s.* 4*d.* Whereas Lyndwood lays a full procuration at 7*s.* 6*d.* in his gloss on constitution the seventh of Stratford, 1342*. The greatest French floren was not above two shillings English; after this computation, the archdeacon's procuration would be 8*s.* 4*d.*, and supposing the Italian to have been somewhat less than the French, it might make the English sum of 7*s.* 6*d.*, which was the archdeacon's full procuration in Lyndwood's time. Archdeacons have often more than this. In such cases we must suppose that the personal visitation was continued, till a night and day's entertainment for seven horses and as many men came to the sum now paid by way of composition for the procuration. Where less than 7*s.* 6*d.* is paid, which is the more common case, it must be taken as the quota laid upon that church, with two or three others hard by, which might be visited on the same day.

N.B. I follow the copy of the extravagants.

| | France.<br>Navar.<br>Savoy, &c. | Almain.<br>England.<br>Hungary.<br>Bohemia.<br>Poland.<br>Denmark.<br>Scotland.<br>Sweden. | Spain. | Italy. |
|---|---|---|---|---|
| | Tur. | Tur. | Tur. | Tur. |
| Archbishops | 200 | 220 | 100 | 40 |
| Their deputies | | 100 | | |
| Bishops | 140 | 150 | 60 | 30 |
| Their deputies | | 80 | | |
| Archdeacons | 35 | 50 | 25 | 10 |
| Their deputies | | 30 | | |
| Arch-priests, or Deans rural | 8 | 10 | 5 | 0 |

* [See below, p. 368, seq., and Lyndwood, Provinciale, p. 224, gl. *Solet solvi.*]

The procurations paid to our bishops, and even archbishops, fall very short of the sums here mentioned: the reason of this is, probably, that none of them have for many ages past made parochial visitations either in person, or by proxy, and so these prelates and their clergy fell into a voluntary and very moderate composition. The archdeacons down to the Reformation kept up their parochial visitations, and were therefore entitled to such compositions as are here mentioned: but then they commonly visited more than one church every day, and could by the canons have but one entire procuration for each day.

## A.D. MCCCXLII.

### ARCHBISHOP STRATFORD'S EXTRAVAGANTS.

LATIN. Sir H. Spelman, vol. ii. p. 572. [Lynd. app., p. 49. Wilkins, vol. ii. p. 696*.]

THESE following are the constitutions provincial (by some called the [a]extravagants) of John Stratford, archbishop of Canterbury, made in a provincial council at London, on the tenth day of October, 1342.

[a] There are two books in the Corp. Jur. Can. under this title. Lyndwood cites the decretals under the same title. Imperial laws not extant in the public books were also so called.

1. [b]Not only the Old Testament, and the canonical sanctions, but the traditions of secular princes, have with a considerate judiciousness discovered how unbecoming a thing it is, and how contrary to that reverence which we owe to God, to celebrate such great mysteries in private oratories, or chapels not endowed, nor assigned to the celebration of divine service, or in houses not consecrated. But priests, both regular and secular, in contempt of all this, celebrating divine offices there, cause great danger to souls by drawing parishioners from their parish churches, and so depriving them of those wholesome instructions which they used there to receive, who thereupon rashly do things that are forbidden, and communicate with some whom they ought not; and contrary to that doctrine which forbids one man to offer hardships to another; and from hence many evils arise, and the accustomed honour and profit of parish churches is lessened. Now we, with the consent and advice of our brethren [Lynd., p. 233.]

* ["*Constitutiones provinciales Johannis Stratford, Cantuariensis archiepiscopi, editæ in concilio provinciali Cantuar. Londini* 10 *die mensis Octobris, anno Domini* MCCCXLII. Ex MS. Cott. Otho A. xv. MS. Lamb. 17. et Elien. 235." To this title Wilkins appends the following note;

"Concilium hoc virtute brevis regii dat. 15 Aug. per mandatum archiepiscopi tertio die juridico post festum S. Fidei virginis in ecclesia S. Pauli, London. est celebratum. Reg. Tho. Beck, episc. Linc. fol. 2."]

decree, that whosoever celebrates masses in oratories, chapels, houses, or places not dedicated, without licence of the [c]diocesan first obtained, contrary to the canons, do for the future incur suspension from the celebration of divine service *ipso facto* for the space of a month. And we decree that licence granted, or hereafter to be granted by the bishops of our province for celebrating masses in unconsecrated places, to other than to great and [d]noble men dwelling in places [e]greatly distant from their parish churches, or [f]notoriously sickly and infirm, be null and of no force. [[g]By this we intend not to derogate from prelates, rectors, and canons of cathedral churches, or religious, so as that they may not celebrate masses, or lawfully cause them to be celebrated as they use to do in their oratories built [h]of old*.] Farther we intend not this punishment against such priests as celebrate masses in the oratories or chapels erected or to be erected for the kings or queens of England, or [i]their children.

[b] The reader may observe that the preface is obscure and corrupted in all three copies, viz., the Oxford and the two copies of Sir H. Spelman, p. 572, and p. 491. I follow sometimes one, sometimes another.

[c] Yet Lyndwood observes that the archbishops granted such licences throughout their province by law or custom†.

[d] Lyndwood extends this to knights‡ that have any office or dignity.

[e] One mile or more. Lyndwood.

[f] Such may have licence, though they are not noblemen. Lyndwood.

[g] Instead of this clause, the parallel constitution published by Sir H. Spelman, p. 491, under the name of Walter Reynold, has the following; "unless such places in which the celebration is made, without licence of the diocesan or the owner of them, be specially privileged by the apostolical see, in which case they who celebrate there are bound to exhibit the instruments of privilege to the diocesan of the place within two months after the publication of this statute; otherwise to incur the suspension before inflicted *ipso facto*."

[h] Lyndwood supposes that the custom here spoken of must have taken its rise from the bishop's licence. And without such licence from the

* [The clause which Johnson has put in brackets is in Lyndwood's text, Provinciale, p. 234, and Wilkins, vol. ii. p. 696.]

† [Cf. Provinciale, p. 233, gl. *Diœcesani.*]

‡ [And to esquires, *Nobilibus.* i. e. Nomine et genere præclaris . . . Et ex dicta definitione colligi potest, quod milites, et eorum superiores, habent dici *nobiles.* Et idem intelligo de armigero, cui conceditur officium vel administratio, cui dignitas et nobilitas annectuntur, ibid., p. 234.]

archbishop of York, says he, the archdeacons of Richmond could not at first have given authoritative institution *.

[i] This extends only to grandchildren: the next generation, and all after that, are *posteri*. Lyndwood.

[Lynd., p. 222.] 2. There is a new covetous invention of exacting immense sums from clerks for letters of institution, when they are admitted to benefices, and when ordained, for letters of orders, for pains in writing, and for seals, against the [k]canon, which says, that as it becomes not a bishop to sell imposition of hands, so neither does it become the minister to sell his pen. And the clerks of archdeacons, of their officials, and others, refuse to deliver certificates of [l]inquests upon the vacancy of benefices to the presented, unless they first pay an excessive sum for the writing of it: we therefore, desiring to abolish this abuse, think fit, with the deliberate advice of this council, to ordain that the said clerks do not in any wise by themselves, or by others, receive above twelve pence for writing letters of inquest, institution, or collation, or of commissions to induct, or certificates of induction into benefices; nor for letters upon taking any sacred order, above six-pence. In other particulars let ordinaries be bound to assign fees to their ministers, with which they ought in reason to be contented. But we will that nothing at all be paid for sealing such letters, or to the [m]marshals for letting them in, janitors, door-keepers, [n]barbers of the bishops, by clerks either in the lesser or greater orders; lest under any pretence whatsoever they make a gain of sealing letters, and of letting men in: and lest the rash violation of these provisions should pass unpunished, we charge that if any thing contrary to the premisses be received, the doubles thereof be restored within a month. Let the [o]clerks who delay to restore it, if they are beneficed, be suspended from office and benefice; but let unbeneficed clerks and laymen be forbid entrance into the church, till they have made competent satisfaction for the doubles to those who paid [the unlawful fees.]

[k] The canon here cited by Lyndwood is *caus.* i. *quæst.* 2, c. 4; it contains a saying of Gregory the First, as is pretended, that no one must exact money for coming into the church, or for the pall: it were well if the popes had observed this rule.

* [Cf. Provinciale, p. 234, gl. *Consuevit.*]

[Two bishops have been famous in England, as on other accounts, so particularly for restraining the excessive demand of fees and vales in their officers and servants. One of them is still fresh in the memories of all, I mean Gilbert of Sarum; the other is one whose story will never die, viz., Thomas Becket of Canterbury; of whom Giraldus Cambrensis (de jure et statu Menevensis Ecclesiæ, p. 625*) informs us, that he swore his officers not to take the value of an English kniple, for making or sealing letters or instruments. This kniple (in Girald's Latin *Cnipulus*) seems plainly to have been the least piece of money then current. A great antiquarian supposes it signifies a knife†. But why an English knife?] [Addenda.]

[l] See 14 const. of Peckham, 1281.

[m] The keepers of the bishops' palaces.

[n] The barbers were to see that the cut of the clerk's hair was precisely canonical, before he went into the bishop's presence; some kings have had barbers licensed by them to look to the cut of the hair of such clerks as attended them in their palaces.

[o] By this it appears that beneficed clerks were sometimes secretaries, or scribes, to bishops.

3. Because archdeacons, their officials, and other ecclesiastical ministers of our province, make delays in giving induction, and certificates of induction, according to the mandates of the superior, to them who are promoted to benefices, after they have instituted and collated to them, unless they are satisfied in their demands of an immoderate sum of money; we ordain with approbation of the [p]sacred council, that such as are bound to induct clerks that have been admitted to ecclesiastical benefices, be content with moderate charges on that account: that is, if the archdeacon induct, with forty pence; if his official, (for his own expense and those that belong to him‡,) with two shillings; leaving it to the option of him who is to be inducted, whether he will pay this procuration to the inductor and those that belong to him, in money or in other necessaries. [q]If more be received by the inductors on such occasions, or on account of performing the inductions in their own persons: or if they do unduly delay to make, and deliver certificates by artificial pretences; we will that they who are blameable in this respect do *ipso facto* in- [Lynd., p. 140.]

* [In the second part of Wharton's Anglia Sacra.]

† [Somner, Gloss. ad X. Script. The word 'Cnipulus,' or 'canipulus,' certainly means a knife, and is the Latinized form of the Anglo-Saxon cnif, and French 'canif.'' See Ducange, art. Canipulus.]

‡ [pro singulis suis et suorum expensis pro diæta, Lynd. Wilkins has, "pro sigillo, ac suorum expensis pro diæta," but gives in a note the reading of MSS. C. and L., which is the same as the foregoing text of Lyndwood.]

cur suspension from office and entrance into the church, till they have made restitution of what they had received to them who paid it, and satisfaction to the party injured through this fault.

[p] Lyndwood declares, he had met with nothing of this council in the chronicles or registers: yet he says it was called Stratford's constitution. It is strange that he who wrote not above eighty years after the common date of these constitutions should want light in this matter. I have posted them here rather in submission to some great men, than out of any evidence of the certainty of the time. The Oxford copy places the other constitutions of Stratford before these extravagants.

[q] In the other copy of Sir H. Spelman, p. 490, there is the following clause added; "yet in such places where less uses to be paid for induction, we intend not by this constitution to add a greater load*." It should seem the practice which now prevails for the archdeacon to give a mandate for the instituted clerk to be inducted by one that was not official, had its beginning in Lyndwood's time. For he proposes the question whether the archdeacon in this case shall have any thing, and answers peremptorily in the negative; but that the inductor shall have what is sufficient for one of his degree†.

[Lynd., p. 133.] 4. Whereas ecclesiastical men are entrusted with dispensing of tithes and other things belonging to the Church, that the poor by their prudent management may not be defrauded; yet the religious of our province having churches appropriate do so apply the fruits of them to their own use, as to give nothing in charity to the poor parishioners being regenerate sons of the churches, to whom they are bound to do this more than to strangers: by which means such as owe tithes and ecclesiastical dues become not only indevout, but invaders, destroyers, and disturbers, to the danger of their own souls, and theirs, and to the scandal of many: therefore, with the approbation of this sacred council, we ordain that the said religious, having ecclesiastical benefices appropriate, be compelled by the bishops every year to distribute to the poor parishioners a [r]certain portion of their benefices, in alms to be moderated at the discretion of the bishops in proportion to the value of such benefices, under pain of [s]sequestration of the fruits and profits thereof, till they yield a reasonable obedience in the premisses.

[r] Not a half, but a fourth, or sixth; but rather a fifth part of the benefice, as Lyndwood here, and p. 153.

* [So in Wilkins, vol. ii. p. 676.]
† [Provinciale, p. 140, gl. *Quantitate pecuniæ.*]

[s] Here is a clear proof that bishops had power of sequestering such appropriate benefices.

5. [t]Though parishioners by laudable custom long prevailing in our province are bound at their own cost to make, and, as often as there is occasion, to repair the bodies and roofs of their own parish churches both within and without: as also the steeples thereof, the altars, images, and glass windows in them, and the fences of the cemeteries; yet the religious, and others having estates, farms, and rents, within the bounds of such churches of our province of Canterbury, especially if they dwell not within the parish belonging to such churches, do unjustly refuse to contribute toward the fabric of the said churches, or the enclosures of the cemeteries, and other burdens belonging to the parishioners; [u]although for the most part such burdens are taxed in proportion to the farms and estates within the parishes; yet the religious in divers places of our province, and others that dwell out of the parish, do occupy or obtain by new purchases divers farms and estates in the parishes of the said churches, insomuch that the residue of the parishioners dwelling within the parishes of the same churches are not able of themselves to bear the burdens, or reparations of the premises, as incumbent on them; by which the houses of God become an eyesore, and many inconveniences thereupon ensue; we therefore, by approbation of this council, think fit that it be ordained that the religious as well as others who have farms, estates, and rents, in any parishes of our province, or shall have for the future, if they do not belong to the glebe, or endowment of the churches to be repaired, be compelled by ecclesiastical censures by the ordinaries to bear all burdens incumbent on these accounts on the parishioners, by custom or law, which in proportion to their estates or rents are imposed upon them, together with the rest of the parishioners of such churches as often as need shall be, whether they dwell within the said parishes or elsewhere. [Lynd., p. 254.]

[t] When churches began to be repaired by the parishioners, managers must have been appointed for this purpose. If churchwardens had yet been settled officers, they would have been mentioned here.

[u] By this it appears that the most ancient way of raising a church cess was by proportioning the rates to the lands used by the several occupiers within the parish, without making any difference between indwellers and

outdwellers. The religious pretended that this was a personal burden, and did not therefore belong to them, if they did not dwell within the parish; therefore the canonists asserted it to be a real burden, and therefore to be charged on the lands themselves. But this distinction seems to me designed to puzzle rather than clear the cause, especially because the church rate is demandable and due from the persons only, not from the lands (excepting from land occupied by quakers, which is a new case) nor can I conceive why the rate for repairs should be real, for the ornaments personal, since both are equally necessary to divine worship. I think it happy that these distinctions begin to be dropped by common consent, and all landholders equally charged to the church. The former practice of obliging the inhabitants to assess themselves distinctly for ornaments and other charges, created endless difficulties and disputes, and was an invention of the worst of papists, the monks and other regulars, to save their own estates from this charge. Lyndwood intimates that by the civil law there was a more effectual way of levying church rates on exempt religious, than that of Church censure *.

[Lynd., p. 181.] 6. Covetousness hath so possessed the minds of some, that they think gain to be godliness, and sell what they ought to give. Though our predecessor, Simon Mepham, of good memory, in the [x]constitution which begins, "And because ordinaries," had ordained with the deliberate advice of a provincial council, that nothing should be demanded for the insinuation of the testament of any defunct, the inventory of whose goods did not exceed one hundred shillings; yet because it is not provided what precise sum may be received when the inventory exceeds one hundred shillings, nor what may be taken for acquittances upon accounts being passed of the administration of the goods with relation to such testaments; the ordinaries of places have made such excessive demands both for insinuations and acquittances, that the estates of the defunct have been so exhausted by such extortions that their wills could not be fulfilled by what was left, even in relation to what was given to charitable and pious uses: by which the laity are exasperated against ordinaries, as consuming what they ought to preserve, and are provoked to frauds and tricks: now to remove the reproach of this usurpation, we ordain that nothing at all be taken by the bishops

* [Sed quæro, quomodo levabitur ab hujusmodi religiosis ista contributio? Dic, si agatur coram judice ecclesiastico, levabitur per monitiones legitimas, et per censuras ecclesiasticas. . . . Possunt etiam ad hoc compelli auctoritate judicis competentis, et per captionem pignoris. . . . Et hoc expedit, quando sunt exempti. Provinciale, lib. iii. tit. 28. p. 255. gl. *Reficiendarum ecclesiarum.*]

or other ordinaries for the probation or insinuation of any testaments whatsoever. We permit six-pence only to be taken by the clerks for their pains in writing such insinuations. But if the inventory of a defunct's goods do exceed [y]thirty shillings in account; and yet does not amount to a hundred, let not the bishops or ordinaries, or their deputies, the auditors of accounts, or other ministers that assist them, presume to receive above twelve pence for the account, and doing all things that concern it for the letters of acquittance and all other [letters] whatsoever. If the inventory amount to a hundred shillings, or upward, but not to twenty pounds, let such as assist at the accounts, and the others before mentioned, be content with three shillings for their pains, for letters of acquittance and other things aforesaid. If it amount to twenty pounds or upward, but not to sixty, let them not accept of more than five shillings for their pains, letters, and other writings. If it amount to sixty pounds or upward, but not to a hundred, let them receive ten shillings and no more. If it amount to a hundred pounds or upward, and not to a hundred and fifty, let them not presume to accept of more than twenty shillings on the accounts aforesaid. And so according to the amount of the inventory for every fifty pounds other ten shillings, and no more, over and above the said twenty shillings. [x]But we permit the clerks, for every letter of acquittance to receive [z]six-pence over and above the premisses for his pains in writing*. And if one receive more than the sum before taxed either in money numbered, or in any other things, let them be bound to pay the doubles of it to the fabric of the cathedral church within a month. If they do not, let such bishops know, that upon delaying to do it above a month, they are forbid entrance into the church: let inferiors know that they are suspended from office and benefice, till they have fully paid the doubles to the cathedral church. Let letters of acquittance by no means be granted to executors of

[x]* [Clericis tamen pro singulis acquietantiarum literis, quas scribunt in hac parte, ultra præmissos sex denarios accipere permittimus pro labore, Lynd.

*Accipere.* Non dicit quantum, sed moderata debet esse talis acceptio, ut sc. quantitas recipiendi moderetur, et commensuretur secundum quantitatem laboris, Lynd., gl. Provinciale, p. 182.

Clericos tamen pro singulis acquietantiis, et literis, quas in hac parte scribunt, ultra præmissa vi. denarios nihil recipere permittimus pro labore. Wilkins, vol. ii. p. 698.]

testaments at the probation, approbation, or insinuation thereof, or afterwards, till a faithful account be given of the administration, under pain of suspension from entrance into the church for six months, which we will that the transgressors incur *ipso facto*.

[x] See constitution of Mepham at London, fifth. A.D. 1328.

[y] Lyndwood seems to resent this constitution as arbitrary and unreasonable, and observes that the officers of the court were left at liberty to demand what they would, when the inventory was under thirty shillings *.

[z] Lyndwood's text has these words, *ultra præmissos sex denarios*, intimating that they might take some money, not mentioning how much, over and above the forementioned sums; but the Oxford copy and Sir H. Spelman, p. 489, for *præmissos* have *præmissa*, which I follow as most probable.

[Lynd., p. 223.] 7. Although the law of nature grant to the workman the fruit of his labour, yet it commands him not to eat who neglects his proper business. Some archdeacons and other superior ordinaries of our province gaping after gain, and casting the things of God behind them, indulge themselves in hunting, and other affectations of grandeur, in making their circuits of visitation, and send such to visit as cannot instruct the clergy and people: they exact procurations contrary to canonical sanctions from churches, whose inside they do not see on the visitation-day; from some that are visited not at all, either by themselves or by any other; from many which they cause to be slightly visited by others on the same day; any one of which would be sufficient for one day's procuration for the archdeacons themselves, and their allowed retinue; from every church, rector, and vicar they exact their whole procuration in money: and often, by a fraudulent contrivance, when they are to visit churches, they come on the night before the visitation-day, and lodge in the houses of the rectors and vicars to their great cost 'with their cumbersome retinues and [a]dogs for hunting†, and on the morrow, when the visitation is ended, they extort a whole procuration in money, as if they had not received any in victuals, though sometimes they dine too with the party

* [Cf. Provinciale, p. 181. gl. *Sex denarios.—Excedere.*]

'† [cum excessivis, et onerosis familiis et vecturis, W. Lyndwood omits the above preamble and begins with the next sentence.]

visited on the same day. Now we desiring, for the quiet of our subjects, and for the salvation of those who are guilty of these excesses, to remedy all this, do strictly forbid by authority of this council, that any one presume to receive a procuration due from a church on account of visitation, till he has diligently discharged that duty by personally enquiring and effectually inspecting as ought to be. If any one will visit several churches in one day let him be content with one procuration in victuals or money, to which let every church that is visited that one day proportionably contribute, as the [b]canons direct: and if on the night before the visitation-day [he be entertained] at the charge of the rector or vicar that is to be visited, or continue with them till after dinner on the visitation-day, let him make an estimate or allowance of such charges in the procuration [c] (if the visitor think that he may lawfully demand it in money), or make an entire compensation for it; so as not to receive the whole procuration in money besides the charges [aforesaid], nor more of the procuration to be paid in money than what remains over and above, those charges being deducted: let him that transgresses know that he is suspended from entering into the church till he has made restitution of what he unjustly received. But because several archdeacons and other ordinaries on account of their honour and nobility, exceed [d]the number of horses and men appointed by the canons, so that they who pay their procurations in victuals are excessively burdened beyond that rate which uses to be paid in money, we leave it to the option of those that are visited, whether they will pay their procuration in the [e]accustomed sum of money, or in victuals. And if the visited church hath chapels depending on it, we ordain that the archdeacons, and other ordinaries who visit, be content with such a procuration as used to be paid for one church in that diocese to which the church belongs, for the visitation of that church and her chapels, under pain of suspension from office and benefice incurred *ipso facto*, till they pay the doubles of what they received over and above the single procuration to the cathedral church. And because archdeacons, and other visiting ordinaries, charge the defects in the churches and the ornaments thereof, and in the fences of the ceme-

teries, and in the mansion-houses, to be repaired under certain pecuniary penalties, which they extort from such as do not obey them by censures ecclesiastical; and so stuff their purses with the money by which the defects might be repaired, to the damage of the poor who are in these days oppressed more than formerly: therefore lest by means of such penal exactions occasion of ill-will be taken against archdeacons, and other ordinaries, and their ministers; and that it ill becomes ecclesiastical men to gape after dishonest gain arising from penalties; we ordain that such penalties as often as they are exacted be applied to the reparation of such defects as have been discovered, under pain of suspension from office; which we decree that they who act contrary to the premisses by applying such penalties to their own uses, do incur *ipso facto*, till they have effectually assigned what was so received to the reparation of the said defects.

[a] *Venaticis*, Sir H. Spelman, p. 490; *vecturis*, horse and men, Oxford.

[b] All the canons made on this subject, I think, agree in this, but whereas Innocent the Third and Gregory the Tenth forbad procurations in money, Boniface the Eighth allowed of this, A.D. 1298, *Sext.*, lib. iii. tit. 20. c. 3. This made way for our present settled compositions, and has at last in effect put an end to parochial visitations. Some attempts have been made here and there toward the revival of them; but it will never be done effectually while archdeacons have their procurations though they do not visit, and when they do visit, must do it in a great measure at their own cost.

[c] Benedict the Twelfth, in his bull concerning procurations, of which I have given some account, just before these constitutions, takes notice of some churches where the procurations were fixed by an immemorial custom, or privilege; in such churches the visitor might demand the procuration in money, and the visited might refuse to pay it in any thing else. See *Extrav. Com.*, lib. iii. tit. 10. In other cases it was at the discretion of the visited to pay either in money or victuals, as below.

[d] See constitution of Hubert Walter, fifth, 1200, and of Stephen Langton, twenty-first, 1222.

[e] The accustomed sum, says Lyndwood, here was 7*s.* 6*d.*, that is 1*s.* 6*d.* for the archdeacon and his horse, 1*s.* for each other of the six horses and men. But in all cases not ruled, says Lyndwood, we must have recurrence to the extravagant of Benedict*.

[Lynd., p. 98.]

8. When the grievances of subjects are removed, superiors enjoy rest by their ease, considering that some officials of bishops, of archdeacons, and other ordinaries celebrating

* [Lyndwood, Provinciale, p. 224. gl. *Solet solvi.*]

their consistories, sessions, and chapters from three weeks to three weeks, or from four weeks to four weeks, through every year, in several places of their jurisdictions and deaneries of our province, do often go to such places where necessary victuals are hardly to be bought, and thereby do aggrieve the rectors and vicars of the churches there, or in the neighbourhood, with excessive charges, and give occasion of scandal and reproach; especially because, if they are not splendidly entertained on those days by the rectors and vicars according to their own wishes, they vex, infest and molest them under various colours and artificial pretences; on account of these and other unjust doings we ordain, with the deliberate advice of this council, that every such consistory, session, and chapter be for the future celebrated in the most eminent places of the jurisdictions and deaneries aforesaid, or however, where victuals may be purchased by all; and that officials and other ministers of the ordinaries at such celebrations, and all other [f]acts which they exercise instead of their principals, perform what concerns them at the expense of such their principals. And we decree [that] citations to [Ed.] consistories, sessions and chapters to be celebrated in any other places, but such as are before described, be *ipso jure* null; and we will that the officials who demand entertainment of the said subjects for expediting the business of their principals, or give occasion to molest them for refusing such entertainment, be thereupon suspended from office, and from entrance into the church, [g]and that they do so remain. [h]And whereas bishops, archdeacons, their officials, and other ordinaries, and their commissaries, command primary citations for the correction of offenders to be executed by rectors, vicars, or parish priests, it is frequently laid to their charge, that they disclose confessions made to them in the court of conscience in relation to those particulars for which they are cited; by which they are greatly scandalized, and the parishioners for the future refuse to confess their sins to them; now we ordain that primary citations from the said ordinaries be not served by rectors, or the others aforesaid, but be executed by the officials, deans, apparitors, or other their ministers. And if such citations are committed to rectors, vicars, or priests, that they be not bound to obey

them: but that the primary citations made by them, and the censures or processes consequent thereupon be void and of none effect.

[f] As inquests on the vacancies of benefices. Lyndwood.
[g] Lyndwood asserts this to be a perpetual suspension.
[h] The following part of this constitution is not in Sir H. Spelman *.

[Lynd., p. 225.] 9. Whereas great grievances are multiplied to our subjects by a burdensome multitude of apparitors, which has nothing reputable in it; while archdeacons have in every deanery riding apparitors, who have foot apparitors under them, who walk with their [i]garsons, naturally bent to evil, to be entertained by rectors and vicars, with whom they make too long stay. And these apparitors, not content with this, raise contributions among them at the four yearly general chapters; and yet make collections of lambs, wool, and sheaves in their season, and cause such as do not contribute to them to be molested, and maliciously vexed by right or wrong: therefore by approbation of this council, we ordain that every one of our suffragans have one riding apparitor only for his diocese; and that every archdeacon of our province have no rider, and but one foot apparitor only for every deanery, who may not stay with the rectors or vicars of the churches more than one night and day in every quarter of the year, unless he be specially invited by them; nor make collections of money, wool, lambs or other things, but thankfully receive what is freely given. But if more are deputed contrary to this [statute], or if any of them rashly act contrary to the premisses, let such as deputed them be *ipso facto* suspended from office and benefice, till they remove those who are thus deputed, whom we also [k]suspend from the office of apparitors *ipso facto*.

[i] Vilest servants.
[k] Lyndwood and Sir H. Spelman have it "perpetually suspend." Lyndwood thinks this too hard, as every body else must; therefore I follow the Oxford copy, and leave it out †.

[p. 323.] 10. Because the offender has no dread of his fault, when

* [The remainder in Wilkins agrees with Johnson's translation.]
† [So Wilkins, vol. ii. p. 700. Cf. Lyndwood, Provinciale, p. 226. gl. *Perpetuo.*]

money buys off the punishment; and the archdeacons of our province of Canterbury, and their officials, and some that are their superiors, when their subjects of the clergy or laity commit relapses into adultery, fornication, or other notorious excesses, do for the sake of money remit that corporal penance, which should be inflicted for a terror to others; insomuch that the offenders are called by some lessees of sin; and they that receive the money apply it to the use of themselves, not of the poor, or to pious uses; which is the occasion of grievous scandal and ill example; therefore we ordain that no money be in any wise received for notorious sin in case the offender hath relapsed more than twice, under pain of restoring the doubles of the money received contrary to this [statute] within a month after the receipt thereof to be applied to the fabric of the cathedral church, and of suspension from office *ipso facto* incurred, in case the restitution be not made within the month: and in commutations of corporal penances for money (which we forbid to be made without great and urgent cause) let ordinaries use so much moderation as not to lay such grievous excessive public corporal penances on offenders, as indirectly to force them to buy them off with a great sum of money: but let commutations, when they are thought proper to be made, be so modest that the receiver be not thought rapacious, nor the giver too much aggrieved, under the penalties before mentioned.

11. Though a man ought to make his purgation in the place where he was defamed; yet the officials of bishops, archdeacons, and other ordinaries, and their ministers, by a contrived malice, as appears, do assign such places to clerks and laics as offer to purge themselves of what is charged upon them, as are in the remoter parts of their jurisdiction, in the country far from the place of their jurisdiction where they committed the offence, where victuals and necessaries can hardly be purchased, and an excessive number of compurgators, and so make the innocent compound for money to avoid fatigues, expenses, and the difficulty of producing witnesses at such places; insomuch that some choose to confess, and do penance for crimes which they never committed rather than to expose themselves and compurgators to such trouble; therefore we ordain that for the future such as are [Lynd., p. 313.]

defamed for crimes and excesses, but are willing to make their purgation, be not drawn from one deanery to another, or to country places where necessaries for life are not to be found. In enjoining purgations to such as are defamed, let bishops, archdeacons, or other ordinaries and their officials, impose no more than six compurgators in case of fornication, or any such like crime; nor above twelve in case of adultery, or other greater crime, under pain of suspension from office, which we will that the transgressors incur *ipso facto*.

[Lynd., p. 225.] 12. In detestation of that abuse of archdeacons and their officials, and other ordinaries, who exact a certain excessive sum of money of [l]priests that are to celebrate divine offices in their jurisdiction before they may do it; thus converting the bounty of priests of this sort (who used to present the clerks that inserted their names into the [m]*matricula* with a penny) into an unlawful tax of six-pence, or thereabouts; we ordain that for the future the archdeacons and other ordinaries, or their ministers, presume not in any wise to receive above one penny, for which they are to register their names at their first admission to celebrate divine offices, under pain of suspension from celebrating divine offices, and from entering into the church; which let the transgressors incur *ipso facto*, till they pay the doubles of what they receive to the fabric of the cathedral church.

[l] This is to be understood of mass-priests, or any assisting priests, who neither had institution nor licence to serve the cure from the bishops.

[m] The register, or list, which the archdeacons kept of the priests and clerks of this sort.

[p. 143.] 13. Covetousness is so craving a thirst, that some clerks barbarously affecting by right or wrong to get benefices that belong to the patronage of archbishops, bishops, abbots, and other ecclesiastical and secular persons, but possessed by others, they do by various fictions pretend that such benefices have long been vacant; and then while the temporalities of cathedral or conventual churches by reason of the vacancy [of the bishoprics, or headships,] or the [n]lands of other [patrons] are in the hands of the king, they procure themselves to be presented, or the benefices to be conferred upon themselves by him, although after these pretended vacancies

[of the benefices] they have been possessed by several persons for so long a time, that there is scarce any remembrance of it, and it is sometimes perfectly false: by occasion of which presentations, or collations, if the presented or collated are not admitted by the ordinaries of the places (as they cannot be while the possessors are not canonically removed) the king's writ called *Quare non admisit* is obtained against the bishop, and they implead, or procure him to be impleaded in the secular court, and cause the °occasion of their vacancy not only as to law and fact, but as to jurisdiction, to be debated in the said secular court, the cognizance whereof the secular power unduly usurps; and the possessors of the benefices are not admitted to be parties in the trial; nor is there any credit given by the secular court to the letters of ordinaries concerning their institution, collation, or induction: ' and the bishops and others, who are not much affected with the danger, making a slight defence or none at all, the right of patronage is carried in behalf of the collator or collatee, the presentor or presentee; and when the secular court writes to the bishop (with a vain threat of executing the judgment) to admit such presentees or collatees, they sometimes by themselves, sometimes by others (who are ignorant of the law, and whom they appoint their deputies) do *de facto* institute such presentees into the place of living possessors, [not] removed by ecclesiastical sentence and induct, or rather intrude them into possession of benefices not really vacant, and constitute them injurious detainers to the manifest deception of souls, and the enormous hurt of the rightful possessors*: we desiring to remedy these excesses, by provision of this council, do ordain that whatever

' * [The text of Wilkins is as follows:

Unde accidit, quod episcopis, et aliis, quos litium hujusmodi non afficit, nec angit periculum, lites ipsas nullo modo, vel segniter defendentibus, pro præsentante et præsentato, collatore seu collatariis, in foro seculari jus evincitur patronatus timoreque vario executionis talis judicii, cum a foro seculari scribitur episcopis, quod præsentatos ac collatarios admittant hujusmodi quandoque per se, quandoque per alios juris ignaros, aliquoties quibus vices suas committunt, taliter præsentatos vel collatarios admittunt, et in locum viventis possessoris per sententiam ecclesiasticam non amoti, de facto instituunt, et in beneficiorum revera non vacantium possessionem inducunt, quin verius intrudunt, et vitiosos constituunt detentores in animarum deceptionem multiplicem, et possessorum justorum læsionem enormem, W. Spelman's text has also 'timoreque vario' in the above passage, but Johnson's translation follows Lynd., app. (p. 53) which has 'timoreque vano.']

clerks for the future do procure themselves to be presented to dignities, parsonages, offices, prebends, or any other ecclesiastical benefices whatsoever, being full and possessed by others, or that procure them to be conferred on themselves, if they do directly or indirectly by virtue of the writs *Quare non admisit*, or *Quare impedit*, or the like, prosecute the bishops or others in the secular court, without any mention made of the possessors of the benefices in the said writ, or while they are not regularly removed (though they have been cited) unless they first cause an inquest to be had concerning the means of the pretended vacancies, by the mandates of the ordinaries, and the possessors to be canonically removed by competent judges ecclesiastical, they do *ipso facto* incur the sentence of the greater excommunication; and that they, as excommunicates, be in no wise admitted to such benefices, but be for ever deemed incapable of them. But if contrary to these [provisions] any one be instituted into a benefice possessed by another *de facto*, let such institution, or admission be void of all effect in law: and let him, whatever he be, that does so institute, or admit in his own right, or by delegation, such a presentee or collatee, into a benefice possessed by another, the possessor not being first removed by a sufficient authoritative sentence in the ecclesiastical court, let him know that he is suspended from office and benefice [p]till the whole damage be made good to the former possessor as it ought. And if the clerk so instituted or admitted, do permit himself to be inducted into a benefice possessed by another, let him be deemed an intruder, and incur *ipso facto* the penalties of intrusion contained in the constitution of [q]Othobon, which begins "Damnable self-love," and others inflicted by the canons and holy fathers. 'By this we intend not to derogate [r]from the power belonging to ordinaries, so as that they may not *de jure* confer benefices which they have a right to collate to, while they are any how possessed by others, nor to restrain such by this constitution as accept of the collation of such benefices*.

'* [Per præmissa tamen, vel infra scripta dignitati regiæ, vel coronæ in his, quæ ad eas pertinent, non intendimus derogare; sed ambitionem insatiabilem clericorum supradicta illicite procurantium et prosequentium (ut præmittitur) cohibere; nec ordinariorum potestati, quin beneficia, ad ipsorum collationem spectantia, quovismodo de facto occupata illicite, non de

[n] The heirs being minors, and the king's wards.

[o] As to this preamble it is more particularly dark.

[p] If he be a bishop, two months, if an inferior till, &c., says the Oxford copy*.

[q] See constitution of Othobon, 10, 1268.

[r] From the royal dignity and crown in things that pertain to it. So the Oxford copy.

14. Lest he who hath recovered the right of patronage in the king's court lose the advantage of his victory; if the ordinary be writ to, that he admit the clerk presented by the recoverer to the benefice, let the presentee be freely admitted, if the benefice be vacant *de jure*, and if there be *de facto* no canonical impediment. But if the benefice be not vacant, let the ordinary intimate so much to our lord the king, or his justices, and excuse himself that he cannot fulfil the king's mandate, because the benefice at present is not vacant. And let the clerk presented by him that has recovered in the secular court, and that farther prosecutes against the ordinary in the secular court, in contempt of the form of prosecution to be made, as is premised, in the ecclesiastical court, incur *ipso facto* the aforesaid sentences of excommunication, disability, and other penalties of the law and constitutions published in this respect. But the recoverer may, if he please, present the possessor to the benefice, that so his right for the future may be declared. [Lynd., p. 217.]

jure, conferre poterunt, volumus derogare, nec eorum collationes beneficiorum admittentes hujusmodi coarctare. W. Johnson follows Lyndwood's text, Provinciale, p. 148.]

* [So Wilkins.]

## A.D. MCCCXLIII.

### PREFACE. ARCHBISHOP STRATFORD'S CONSTITUTIONS.

Sir H. Spelman, vol. ii. p. 581.

Mr. Gery, (and I wish this were his only mistake,) in his appendix to Dr. Cave's *Hist. Literaria*, vol. ii.*, places an English synod in the year 1341, and cites for his authority Sir H. Spelman, vol. ii. p. 549; there the reader will find a single constitution, which is no other than the last but one of his extravagants: it is there placed as an appendix to the form of general excommunications which this archbishop ordered to be published in his diocese of Canterbury. The council in which the following constitutions were made is said to have been holden on the "Wednesday after the feast of St. Edward, king and martyr, 1342:" that feast is on the eighteenth of March, and therefore if the convocation met before Lady-day, 1342, they could scarce rise till it was come or past. For this reason, and to distinguish these constitutions from the former, I place these constitutions A.D. 1343.

* [p. 96. Compare Wilkins, vol. ii. p. 675—681.]

## A.D. MCCCXLIII.

### ARCHBISHOP STRATFORD'S CONSTITUTIONS.

LATIN. Sir H. Spelman, vol. ii. p. 581. [Lynd. app., p. 43. Wilkins, vol. ii. p. 702*.]

THE constitutions of the lord John de Stratford, archbishop of Canterbury, published in the year [a]1342, on the Wednesday next after the feast of St. Edward, king and martyr, in the church of St. Paul's, London, in the presence of his comprovincial bishops, viz.,

The Lords

| | |
|---|---|
| Radulph, London; | Thomas, Hereford; |
| Roger, Coventry and Lichfield; | Radulph, Bath; |
| | Simon, Ely; |
| John, Exon; | Thomas, Lincoln; |
| Robert, Sarisbury; | Wolstan, Worcester; |
| Robert, Chichester; | David, Bangor; |

the rest appearing by their proxies, Edward the Third reigning in England, Clement the Sixth being chief pontiff.

[a] But Lyndwood with greater exactness says sub anno 1343. However the reader will excuse me for putting them in the beginning of this year, for the better distinguishing them from the former constitutions in my references.

The ambition of some hath infested the holy Church, the spouse of Christ, endowed with the privilege of liberty from above; therefore the chief pontiffs of the Church of Rome, and secular princes, and especially the catholic illustrious kings of England, recollecting the plagues with which the Egyptians were stricken for enslaving the children of Israel, who were a type of the ministers of the altar; and that the

* ["*Concilium Londinense die Mercurii proxima post festum Sancti Edwardi, regis et martyris, celebratum in quo constitutiones domini Johannes Stratford, Cantuariensis archiepiscopi, editæ sunt, in præsentia comprovincialium episcoporum; viz.*—

Ex MS. Cott. Otho. A. xv. fol. 120, a. et MSS. Lamb. 17. et Elien. 235, et Oxon. Bodl., Digby 81." Wilkins places these constitutions in A.D. 1342.]

oppressions of the Church of England never turned to the advantage of them that were the authors of them, but to their detriment, and to the hazard of their salvation, have endowed the English Church with many prerogatives of liberty, privilege, and immunity; yet because human sensuality, prone to evil from the youth up, hath so subverted good manners both in clergy and people, that the remedies hitherto provided have not been sufficient to restrain evil appetites, and to preserve the rights and liberties of the Church of God; we John, by divine permission archbishop of Canterbury, having invoked the grace of the Holy Spirit, see it proper to put a stop to the attempts of perverse men, and for the extirpating of vice, and for the reforming both of clergy and people, to ordain with the authority of this council, and with the consent and advice of our brethren and fellow bishops of the province of Canterbury, what is to be observed in times coming.

[Lynd., p. 354.] 1. The illustrious Edward, king of the English, inspired with the grace of God from above, desiring that the peace of the Church and kingdom be firmly preserved, hath long since required us and our fellow bishops by his letters, that public malefactors and disturbers of the peace of holy Church, and of his own peace, felons, maintainers of felons, conspirators, such as are perjured in assizes or juries, such as knowingly break their oaths before the justices of our lord the king, undertakers of false actions, the maintainers and fautors of those who do manifestly procure the disturbance and violation of the liberty and right of the Church and kingdom, within the kingdom, be restrained by ecclesiastical censure in every diocese, and [b]desired that such may be involved in the sentence of the greater excommunication, and be publicly denounced excommunicate; therefore we, imitating the piety of the said king, desiring to curb the boldness of such perfidious men, by the authority of this council do will and pronounce that all such malefactors as shall knowingly offend in this manner within the province of Canterbury for the time to come, do *ipso facto* incur the sentence of the greater excommunication. And we reserve the absolution of them to the ordinaries of the places, or in the vacancy of the cathedral churches to such as shall exercise episcopal juris-

diction there, except at the point of death: and that by the greater solemnity of the excommunication the exploits of such offenders may be the more abhorred, we charge by the approbation of this provincial council, that all and singular the malefactors aforesaid be publicly and in general denounced excommunicate in every cathedral, collegiate, and parish church of our province of Canterbury on the first Sunday in Lent, on the feast of Corpus Christi, and two other festival solemn days yearly, with an intimation of the absolutions being reserved as aforesaid.

[The archbishop two or three years before had caused the general excommunications against the violators of Magna Charta, &c., to be published; the king resented this, as an affront offered to him, and supposed that the archbishop intended by this to denounce his majesty excommunicate, and therefore forbad the bishops to publish them any more. The archbishop answered that he had made a particular exception of the king, queen, and royal family. This was while the archbishop was under the king's displeasure. (See Birchington, pp. 34, 37, 38*.) The king was now convinced that the archbishop had not deserved his anger, and was fully reconciled to him, and desired him to publish the excommunications.] [Addenda.]

[b] Yet no ecclesiastical judge, says Lyndwood, is to excommunicate his subjects at the command of the king or secular judge.

2. The outward habit often shews the inward disposition: and though the behaviour of the clergy ought to be the instruction of the laity, yet the prevailing excesses of the clergy as to tonsure, garments and trappings, give abominable scandal to the people; because such as have dignities, parsonages, honourable prebends, and benefices with cure, and even men in holy orders, scorn the [c]tonsure, (which is the mark of perfection, and of the heavenly kingdom,) and distinguish themselves with hair hanging down to their shoulders in an effeminate manner: and apparel themselves like soldiers rather than clerks, with an upper jump remarkably short and wide, with long hanging sleeves not covering the elbows: [d] their hairs curled and powdered, and caps with tippets of a wonderful length, with long beards, and rings on their fingers, girt with girdles exceeding large and costly, having purses enamelled with figures, and various sculptures gilt hanging with knives like swords in open view; their shoes chequered with red and green, exceeding long and va- [Lynd., p. 122.]

* [In Wharton's Anglia Sacra, tom. i.]

riously pinked; with croppers to their saddles, and baubles like horns hanging down on the necks [of their horses], and cloaks furred on the edges, contrary to canonical sanctions, so that there is no distinction betwixt clerks and laics, which renders them unworthy of the privilege of their order*; we therefore to obviate these miscarriages as well of the masters and scholars within the universities of our province, as of those without, with the approbation of this sacred council, do ordain and charge that all beneficed men, those especially in holy orders in our province, have their tonsure as comports with the state of clergymen, and if any of them do exceed by going in a remarkably short and close upper garment, with long or unreasonably wide sleeves not covering the elbow, but hanging down, with hair unclipped, long beards, with rings on their fingers in public (excepting those of honour and dignity), or exceed in any particular before expressed; let such of them as have benefices, unless within six months' time from the committing of these misbehaviours they effectually reform upon admonition given, incur suspension from office *ipso facto* after the end of those six months; and if they continue under it for three months, let them from that time be suspended from benefice *ipso jure*, without any farther admonition: and let them not be absolved from this sentence by their diocesans (to whom by the authority of

* [II. *De habitu et honestate clericorum.* Exterior habitus mores et conditiones intrinsecas personarum frequenter ostendit; et licet clericorum gestus exemplum esse debeat, et informatio laicorum, tamen clericorum abusus, qui plus solito invaluit his diebus, in tonsuris, vestibus, et ornamentis equorum, ac aliis, abominabile scandalum in populo generavit, dum ecclesiasticas dignitates, personatus, præbendas honorabiles, et curata beneficia obtinentes, in sacris etiam ordinibus constituti, coronam (quæ regni cœlestis, et perfectionis est indicium) deferre contemnunt, et crinium extensorum quasi ad scapulas utentes discrimine, velut effœminati militari potius, quam clericali habitu induti superiori, scil. brevi seu stricto, notabiliter tamen et excessive latis, vel longis manicis, cubitos non tegentibus, sed pendulis, crinibus cum furruia vel sandalo revolutis, et, ut vulgariter dicitur, reversatis, et caputiis cum tipettis miræ longitudinis, barbisque prolixis incedere, et suis digitis annulos indifferenter portare publice, ac zonis stipatis pretiosis miræ magnitudinis supercingi, et bursis, cum imaginibus variis sculptis, amellatis, et deauratis, ad ipsas patenter cum cultellis, ad modum gladiorum pendentibus, caligis etiam rubeis scaccatis et viridibus, sotularibusque rostratis et incisis multimode, ac croperiis ad sellas, et cornibus ad colla pendentibus, epitogiis aut clochis furratis, uti patenter ad oram, contra sanctiones canonicas temere non verentur, adeo quod a laicis vix aut nulla patet distinctio clericorum unde professionis et ordinis suorum prærogativa suis reddunt demeritis se indignos. W. Lyndwood as usual omits the preamble.]

this council we reserve the absolution of them) till they pay the fifth part of one year's profit of their benefices to be distributed to the poor, in the places where they are beneficed by their diocesans within three months after. And if during their suspensions they meddle with divine offices, or with the administration of their said benefices, as they did before, that from that time forward they be deprived of their said benefices. Let unbeneficed men who commonly and publicly pass for clerks, if they exceed in the premisses, or in any of them, be disabled from obtaining a benefice for four months, unless they do within six months effectually reform themselves upon admonition given. Farther let such as are students in the universities of the said province, and that pass for clerks, if they do not effectually abstain from the premisses, be *ipso facto* disabled from taking any ecclesiastical degrees or honours in those universities, till by their behaviour they give proof of their discretion as becomes scholars; with a saving for other punishments declared against such offenders. Yet by this constitution we intend not to abridge clerks of open wide [e]surcoats, called table-coats, with fitting sleeves to be used at seasonable times and places; nor of short and close garments while they are travelling in the country at their own discretion. But because bishops cannot with a good face reprehend others, if they do not reform themselves and their domestics in this respect, we ordain that the bishops of this province observe a decorum in their tonsure, habit, and other points before mentioned, and cause it to be observed by such clerks as dwell with them. [[f]And because it little avails to make laws, unless they are put in execution, we charge by authority of the council, that the ordinaries of the places do, as they ought, make diligent enquiry every year, by themselves or by others, concerning these matters, and that they observe the present constitution, and with caution cause it to be observed against offenders.] [Lynd., p. 16.]

[e] Tonsure sometimes signifies not only the shaved spot on the crown of the head, but the whole ecclesiastical cut, or having the hair clipped in such a fashion that the ears might be seen but not the forehead.

[d] Here I follow the Oxford copy, which has it, *crinibus furrura, vel sandalo revolutis, et reversatis.* For whatever is the meaning of *furrura*

I think it most probable that by *sandalum* is meant the flour of the best sort, and that therefore thereby is meant powder, or starch, which then as well as now was used for the improvement of hair. I can make nothing of Sir H. Spelman's copy here.

[e] Made to save better clothes, especially at eating and drinking at home, Lyndwood*.

[f] This is not in Lyndwood, but it is in both the other copies†. Lyndwood begins his gloss at these words, "we therefore,— with the approbation of this sacred council."

[Lynd., p. 154.] 3. Although [g]Otho and Othobon, of good memory, formerly legates of the apostolical see in England, took care by their constitutions that churches should not be farmed out to laymen, nor to clerks for above five years; yet some by a fraudulent device lately contrived, do let out their churches to laymen, and sometimes to women, or to clerks, without the diocesan's licence, contrary to those, and other constitutions; and for a colour insert the name of a clerk, together with that of the layman, who is party to the contract, in the instruments made for letting such churches, although the clerk there named be not a party to the contract: and the said laymen by means thereof do dwell in the manses and houses of the churches so let to farm, together with their wives and children, and families, 'and publicly exercise trades in them‡, and do other unbecoming business there, to the scandal of the people, and the damping of their devotion, and to the defrauding of the churches, and lessening of their rights; therefore by the approbation of the provincial council, and by way of addition to the said constitutions, we ordain that from this time forward, so often as an ecclesiastical benefice is farmed out to a clerk and a laic in our province, or the name of a clerk is inserted together with that of a laic in the instruments made for this purpose; or when a clerk is feigned to be the farmer, but is not; or if laics in their own names collect the fruits of benefices farmed, and convert them directly to their own use,

* [Provinciale, p. 124, gl. *Mensalibus.*]

† [Also in Wilkins, vol. ii. p. 703. Johnson seems to have overlooked the place of Lyndwood's Provinciale noted in the margin where the above passage which he has enclosed in brackets is given nearly as in Spelman, Lynd. app., and Wilkins, with the omission of the first few words "Ad hæc, quia parum valeret jura condere, nisi essent, qui ea executioni debitæ demandarent."]

'‡ [tabernas in eis publicas facientes, W.]

that such contracts be of no force, and that by virtue of them one party be not obliged to the other. But we will that they who from this time forward do so let and take benefices to farm, be obliged to pay the third part of the fruits thereof, or of the estimated value thereof, the sum to be made up between them, if the lessee be solvent, if not the whole to be paid by the lessor, to the fabric of the cathedral church of the place, notwithstanding that the name of a clerk was inserted. And because the religious, and other [h]proprietors of benefices in our province, affirm that they are not [i]bound by the constitutions aforesaid; we ordain, with the approbation of this council, that if they let to farm their benefices, or their portions of tithes and profits in them, which they enjoy by virtue of their appropriations, either to clerks, without licence of the diocesan, or to laics in any manner whatsoever, or are guilty of any excess whatsoever, contrary to the tenor of this or other constitutions, they be for the future punished in manner aforesaid.

[g] See constitution of Otto, 7, 1237; of Othobon, 20, 1268.

[h] Such as colleges in the universities. But Lyndwood observes that this is contrary to a constitution of Innocent the Third, A. D. 1212, *Decretal.*, lib. iii. tit. 18. c. 2, and was not therefore of force so as totally to disable them from farming out benefices, but only so as that the lay farmer might have no perpetual property in the tithes, or power over the clerks*.

Farther, Lyndwood in his gloss at the words "provincial council," declares he knows not who were present at this council, and particularly whether they were there whose interest was concerned, (I suppose he means the heads of religious houses, and the proctors of the diocesan clergy.) He goes on in the following manner: "I say this on the account of what is here ordained, several particulars whereof are repugnant to common right. For you ought to know that there is a general, provincial, and synodal (that is, diocesan) council. To a provincial council the bishops are to be summoned, and none else are necessary. Yet if others come they are to be admitted; others also must be summoned, that is, such whose actions are to be called in question†." By these last words, I suppose, he intimates that the impropriators and incumbents ought to have been at this council, because their management of their spiritual revenues was here debated, and determinations made in relation to them. But bishops only are mentioned in the preface.

[i] One would think that legatine synods confirmed by the pope, or his proxy, should have bound the religious, as well as seculars; but they were

* [Lyndwood, Provinciale, p. 160. gl. *Non obtenta.—Laicis quovismodo.*]

† [Ibid., p. 154. gl. *Provinciali Concilio.* Compare above, p. 350, note ‡.]

the darlings of the pope, and under no restraints so long as they were true to him.

[Lynd., p. 188.] 4. Men blinded with damnable error cannot escape the perdition of their souls; while they pay the tenth sheaf to the harvesters for their labour, and by a great mistake in counting, they leave out that tenth sheaf in their reckoning, and so pay the eleventh instead of the tenth; and insist that they ought to pay the hire of their labourers in the harvest before the corn be tithed, in contempt of the commandment of the Old Testament and the New: and there is a new malicious invention of some laymen, in exclaiming against the servants of ecclesiastical men as rogues, and causing them to be arrested, and causing their masters to be molested for carrying away tithe sheaves, left as such in the lands, but yet not marked. And some of them implead ecclesiastics, and their servants, in the secular courts, and put them to great trouble and charge for carrying their tithe of corn and other things through their ground: others permit them to go only round about ways into and from their farms, making the proper accustomed roads for their carriages difficult to be passed, contrary to ecclesiastical liberty: farther, some permit not the tithes, though marked and set out, to be carried off their lands, so long as any of their own corn remains there; but knowingly suffer it to be trampled upon and consumed by their own and other men's cattle; and do give, or cause to be given, manifold impediments in the paying, collecting, and carrying away of tithes: we therefore to obviate such damnable attempts of perverse men, by a wholesome remedy, by the advice of this council, do pronounce them to be involved in a sentence of greater excommunication, who are guilty of excess in the premisses, or in any of them within our province from this time forward; and such as command or procure such unlawful things to be done, or take upon themselves the doings of those by whose wicked tricks the right approved custom or liberty of the Church is diminished, or any injury, damage, or vexation offered, contrary to ecclesiastical liberty; and we specially reserve the absolution of such to the diocesans of the places, except at the point of death.

5. Although God hath promised abundance of all things to those that duly pay their tithes; yet to our grief, some of our province, contrary to the doctrine of the Old and New Testament, refuse to pay tithes to God and the churches, to which they are notoriously due, of their [k]ceduous wood-lands, and of the wood lopped off from ceduous trees, (which cost less labour than the fruits of the earth,) on account that they have not paid such tithes in time past, which they judge to be lawful, as established by long custom; and they also make a doubt what is to be judged ceduous wood: we therefore, observing that if the Church hath for a long time been defrauded of her right, the crime is not lessened, but increased by this means, and that [l]famine, and want of all things oppress them who do not duly pay such tithes, declare, by a deliberate resolve of this council, that [m]ceduous wood-land is that which is kept on purpose to be felled, and which being cut from the stump or roots grows again, and that a real, predial tithe of it is to be paid to the mother-churches; and that the possessors of such wood-lands are to be compelled by all manner of Church censures, according to canon, to the payment of the tithes of the wood, when felled, as of hay and blade. [Lynd., p. 190, 356.]

[k] I cannot find that any one has ever given us an English word for this Latin one; it is evident that it was not intended to signify coppice, or underwood only, because trees lopped are called *arbores cæduæ* in this constitution; and it is certain that the clergy understood it as comprehending all felled wood: for there was a complaint against them in parliament in the forty-fifth year of King Edward III. now reigning, that tithe was demanded of trees of above twenty years' growth, under the name of *sylva cædua*.

[l] Some would have it that a famine now prevailed in the kingdom, and that the convocation was willing to have it believed that it was a judgment on the people for not paying tithe of wood; but the words of the constitution may well be taken as a general observation, without any view to the present times in particular.

[m] Lyndwood here asserts that this description is to be taken disjunctively, and that wood is ceduous, if either it be kept on purpose to be felled, or grows again from its stump or root; and concludes that timber trees are tithable, according to the first part of the description*; although he lived eighty years after the making of the constitution, and long after

* [Provinciale, p. 190. gl. *Renascentur.*]

the statute made in the forty-fifth year of this king's reign against demanding tithe of trees of twenty years' growth and upward *.

[Addenda.] [Here Lyndwood seems to drop the claim of tithe of timber trees: for he says tithable wood is such as is for firing, not for building; but still persists that the oldest trees are tithable if felled for fuel. For he delivers it as a maxim, that tithe is due of all products of the earth, and not of the fruits only: he particularly mentions stones dug out of quarries; he asserts tithes to be due of treasure trove, but then he owns this in effect to be a personal tithe; for he says it is a tithe of *quasi* negotiation. He farther asserts tithes to be due out of the fees of advocates for pleading, and masters for teaching†. I fear we shall never be able to convince our counsellors learned in the law that this is true.]

[Lynd., p. 191.] 6. Violent presumption subverts reason, and provokes divine vengeance, not only coveting what belongs to others, but by impudently invading what is forbidden, inasmuch as laymen sacrilegiously lay hands on what is assigned for ecclesiastical uses. In many parts of our province a custom is grown up for laymen unlawfully to seize, and convert to various uses, at their own discretion, the oblations made in churches, chapels, or cemeteries, at the altars, crosses, images or relics there; although under the old law none of the Israelites might eat the loaves that were offered, but the sons of Aaron only: much more may not laymen touch what is offered with a regard to God in the church, which outshines the shadow of the law: therefore, with the deliberate advice of this council, we decree that all laymen whatsoever, who seize, take away, or dispose of the oblations made, or to be made in churches, chapels, or the porches, or cemeteries belonging to any of them, under colour of any [n]work, custom, or other pretence whatsoever, without consent of the ecclesiastical persons, to whom the taking of them belongs, and for a [o]sufficient lawful cause to be approved by the bishop of the place, be laid under a sentence of greater excommunication, *ipso facto*.

[n] As the building or repairing a church, or steeple, &c.

[o] As for instance, if the church want reparation and furniture, and they who should find it are not able, and one be willing to supply this defect at his own cost, on condition he may take the offerings made at such a place for such a time: Lyndwood owns this reason sufficient for the bishop to grant such a licence, but he will hardly allow it lawful.

* [45 Edw. III. c. 3. Statutes of the Realm, vol. i. p. 393. ed. 1810.]

† [Provinciale, p. 190. gl. *Lignis.*—p. 200. gl. *Arborum.*]

7. We publish in a new manner the [p]statute of Boniface of good memory, our predecessor, which begins, "Because when laymen," &c., concerning which doubts have been raised, in relation to the goods of intestates, and the last wills of tenants in villainage, and others of a servile condition, by adding some things to it, and omitting others; we decree it hereafter firmly to be observed in the words here following. It sometimes happens, that when laymen or clergymen by divine judgment die intestate, the lords of the fees do not permit their debts to be paid out of their movables, nor their goods to be distributed on their own behalf, for the use of their wives, children, parents, or otherwise, at the disposal of the ordinaries, in regard to that [q]portion which according to the custom of the country particularly belongs to the deceased: others obstruct the free making and execution of the testaments; and the last will of testators, being [r]tenants in villainage, or of a servile condition, as also of women unbetrothed, or married to themselves, or to other men, against the laws and customs of the Church hitherto practised, to the offence of the divine Majesty, and the evident injury of ecclesiastical right: therefore we, by authority of this council, decree that all and singular offenders in these points, or in any of them, shall for the future be under the sentence of the greater excommunication. And let not the probation and approbation of such testaments by laymen be in any case required, when they have once been proved and approved by the ordinaries to whom it belongs, unless some [s]lay fee chance to be devised in such testament. Nor let the clergymen or laymen of what condition soever, hinder the [t]testaments and last wills of the deceased from having their full effect, as to what may be bequeathed by custom or law: let the transgressors know that they are for the future involved in a sentence of greater excommunication by authority of this council. And we decree that the spiritual sword be used against those who wickedly exceed in the premisses, as against violators and disturbers of ecclesiastical liberties. And we forbid the executor of any testament whatsoever to administer the goods of the deceased, unless a faithful inventory of the said goods be first made, the expenses of the funeral, and of making such an inventory only [Lynd., p. 171.]

excepted: and we will that such an inventory be delivered to the ordinaries of the places, within a time, to be set by them at discretion. And after a testament hath been proved according to custom before the ordinaries, [u]let not the execution or administration of the goods be committed to any, but such as are able to give a due account of their administration, and can give sufficient security, if there be occasion for the doing of it, when they are duly required by the ordinaries of the places. And we ordain by authority of this council that [x]no religious, of what profession soever, be executors of testaments, unless it be granted him by the indulgence and licence of the ordinaries; and that the parish church have its accustomed [y]right out of the portion that particularly belongs to the deceased. Farther, we ordain that no executor do apply or appropriate any of the goods of the deceased to himself by title of purchase or otherwise, unless what was given him by the testator while alive, or left him in the testament or last will, or what is allowed him by the ordinary for his pains as executor, or what was owing to him from the deceased, or for the reasonable charges of administering, under pain of suspension from entering into a church, which we will that the transgressors incur *ipso facto*. And let them not obtain absolution till they have restored what was so unduly applied or appropriated to themselves, and paid the doubles thereof to the fabric of the cathedral church, whereof the deceased was a subject, out of their own goods. And we command all and singular the premisses to be solemnly published twice every year, in every church of our province of Canterbury.

[p] See const. of Boniface, 15, 1261.

[q] See note (y) below in this same constitution.

[r] Lyndwood denies that these *ascriptitii* were slaves, unless in regard to their masters; he says they were such as had belonged for thirty years to the soil, and so made by prescription, or had confessed themselves to be such twice under writing*.

[s] Lands in this age might be devised by testament, says Lyndwood, by the special privilege of some cities and places. Lyndwood†.

[t] Testaments are solemnly made in writing, wills by nuncupation.

[u] In case that the executor relinquish, or be disabled.

[x] See constitution of Peckham at Lambeth, the twentieth, where Lynd-

* [Lyndwood, Provinciale, p. 172. gl. *Ascriptitiorum.*]
† [Ibid., p. 174. gl. *Legari contingat.*]

wood calls this clause against religious men's being executors a constitution of Boniface*.

[y] The portion of the deceased was what was assigned by the ordinary for the supposed benefit of the defunct's soul, which was to be determined by custom: sometimes, says Lyndwood, it was the whole personal estate, as when there was neither wife nor children (and he should certainly have added) nor parents: sometimes a half, as when there is a wife surviving but no children; sometimes a third part, as when there is both wife and children: or the portion of the defunct may signify the legacy left to some religious house, where he chose to be buried by his last will. In this case the parish church's share was one fourth†. N.B. Before the thirty-first year of this king's reign the ordinary was not bound to grant administration to any, but might administer himself; or if he chose to grant letters, he might grant them to whom he pleased; but by a statute then made he is tied to grant them to the next of kin, if he be a lawful person‡.

8. Improbity hath so blinded the interior sight of some ecclesiastical judges of our province of Canterbury, that they do not permit the executors of beneficed clerks, and of other men, of what condition soever, to dispose of their goods according to the direction of the testators, according to the sanctions of law and canon; and they usurp the movables of testators, and of intestates that have movables within their jurisdictions, (which after the payment of debts should be applied to pious uses,) so as sometimes to distribute them at pleasure, and to [z]exclude [the deceased] themselves, and their creditors; upon consideration whereof many when they are sick do often alienate their movable goods, so that churches are defrauded, creditors, children and wives, who by law and custom ought to share in the goods, are damnified and deprived of what is due to them, to the great hazard of souls: therefore we ordain that bishops and other inferior ecclesiastical judges of the province of Canterbury do not at all concern themselves, except in cases expressly permitted, with the goods of beneficed clergymen, (who may undoubtedly make testaments by the custom of the kingdom of England,) or of any other, under what pretence soever; but freely permit the executors of testaments to dispose of them: and let them distribute such goods of intestates as remain over and above, after the payment of [Lynd., p. 228.]

* [Lyndwood, Provinciale, p. 167. *Consuetum.*] See above pp. 203, 295.]

† [Ibid., p. 178. gl. *Defunctum*—

‡ [31 Edw. III. s. 1. c. 11. Statutes of the Realm, vol. i. p. 351. ed. 1810.]

their debts, for pious uses, to the kindred of the deceased, their servants and [a]friends, for the salvation of the souls of the deceased, retaining nothing to themselves, but some small matter, perhaps, for their own pains, under penalty of suspension from entering into the church; which we will that ecclesiastical judges incur *ipso facto*, when they transgress, till they have made competent satisfaction in the premisses.

[z] See the foregoing constitution, and the note next above.

[a] Lat. *propinqui*, near either in blood, or place of abode*. Lyndwood.

[Lynd., p. 161.] 9. We observe to our grief that through the growing wickedness and corruption of men in the province of Canterbury, prelates of churches, beneficed clergymen, and some laymen, when they apprehend that they are in danger of death, do while alive, give away or alienate all their goods, or so great a share of them, that not only the churches (to the reparation whereof, as also of the books and ornaments they were obliged†) are deprived of all remedy, but also the king, and other creditors are irrecoverably defrauded of their rights, and their wives and children, if they are married, of the portions due to them by law and custom: and some who assist sick men in their extremity have advised and procured such alienations, and by their entreaties hindered the free making of testaments, and so maliciously deprive churches, and others aforesaid, of their right: therefore we, by the deliberate advice of this council do will that all and singular within our province, who do thus maliciously or fraudulently give and alienate their goods, and they who are conscious to such fraud or malice, the accepters of what is thus alienated, and they who give their advice, assistance or countenance to it, do incur the sentence of the greater excommunication, *ipso facto*. Farther, let the donors thus alienating their goods for the grievousness of their excess, be deprived of ecclesiastical sepulture, any [b]absolution from the said sentence whatsoever notwithstanding. And lest the difficulty of proving the fraud and malice should render this provision ineffectual, we ordain that when any of the said province

* [Provinciale, .p. 180. gl. *Propinquis.*]

† [ad quarum, seu cancellorum, librorum vel ornamentorum, earumque reparationem dum vivebant fuerant obligati, W. vol. ii. p. 706. Cf. Lynd. app., p. 46. Conc. Prov. Ebor., A.D. 1466, Wilkins, vol. iii. p. 601.]

do so give away, or in any manner alienate all their goods, or so large a share of them, that it is evident the churches or other creditors cannot be satisfied as to what is due to them, nor the wives and children as to their portions aforesaid, such donation or alienation be deemed to be done through malice or fraud, no farther proof being required.

[b] Here Lyndwood says several things of absolution, which are not unworthy of my readers' observation. It ought, says he, to be denied to none at the point of death. But he denies that any can give it but a priest; an archdeacon, says he, if he be not a priest cannot give absolution in *foro pœnitentiæ*, though he may in *foro contentioso:* and though absolution is not to be denied to such an offender as is mentioned in this constitution, from the excommunication inflicted by law, at the point of death: yet he is not by this freed from the penalty there following, (viz., want of Christian burial). When it is said "any absolution whatsoever," if it be meant of judicial absolution, it may signify either an absolution *ad cautelam*, (which uses to be given, when the person excommunicate *de facto* offered to prove that he was not excommunicate *de jure;* and he had eight days allowed him to prove it,) or true and final absolution. But, says he, the *absolutio ad cautelam* has no place where the excommunication is passed by law, as here; or any absolution whatsoever may denote a solemn or unsolemn absolution, an absolution in the court of penance, or in the contentious court, whether made in particular or in general, while the man is alive or after his death. But, says he, can such absolution be given by way of potestative jurisdiction without satisfaction first made? The reason of the doubt is because the offence is manifest: but it appears that however manifest the offence be, yet upon giving security to obey the law, the excommunicate may be absolved. Yet he adds this is true only in case of contumacy, or when the offence is not manifest, or when God only is injured by it. For if the offence be certain and manifest and the interest of the adverse party is affected by it, then absolution cannot be given before satisfaction be made, though the excommunication be passed by law or canon, as it is here: and he asserts the same to be true when the Church is immediately affected by it. But if the offender be too poor to make satisfaction, absolution may be given upon the offender's putting in security to make satisfaction, whenever his fortunes enabled him to do it. He farther adds, that absolution ought not to be given but in presence of the adverse party, and after satisfaction made, unless that party be contumaciously absent, though cited. And if absolution be given without this, it is good, yet not without satisfaction made. A simple priest at the point of death may absolve from excommunication passed by law, or by man. If he die excommunicate, yet he may be absolved by him that was of right to have absolved him, if he had been alive; and being absolved he may be buried in the cemetery, and prayers may be made for him; unless the excess be grievous, as here. When a simple priest ab-

solves at the hour of death, yet security for satisfaction ought to be given, at least on condition that the man's fortunes hereafter enable him to do it: and he supposes that this may ground an action against the offender's heirs. But he concludes, that though generally he who is absolved may be buried, as being free from mortal sin, yet here it is otherwise provided *in terrorem;* especially because it is supposed that he can make no satisfaction, as having given away his estate before: otherwise, if he were able to make satisfaction, or if satisfaction could be had from his heirs, Christian burial should not be denied him *.

[Lynd., p. 183.]

10. A probable good often becomes an experienced evil, and then an alteration is allowable. It is a devout custom of the faithful to observe night-watches, in behalf of the dead before their burial, and to do it sometimes in private houses, to the intent that the faithful there meeting together and watching, might devoutly intercede for them with God: but by the arts of Satan this wholesome practice of the ancients is turned into buffoonery and filthy revels; prayers are neglected, and these watchings are become rendezvous for adulteries, fornication, thefts, and other misdoings: as a remedy for so rife a disease, we ordain that when ecclesiastical men have performed the [c] memories of the dead, none for the future be admitted to the accustomed night-watches in private houses, where dead corpses often remain till their burial, the relations and such as say psalters for the dead only excepted, under the pain of the greater excommunication, which they who keep such watches contrary to the premisses ought to fear.

[c] Or exequies, as Lyndwood calls them; it was an office for the dead just now expired, as the *vigiliæ* was an office for the nights, and divided into several hours, or parts: these were used while the corpse was above ground: Lyndwood here lets us know upon what ground the devotions for the dead were so intolerably multiplied in this age; for he lays it down as a certain maxim, that it is better that superfluous devotions be offered in behalf of men to whom they do neither good nor hurt, than that there should be any deficiency of them in behalf of those to whom they do good: he cites this from St. Austin † in Gratian, causa 13. qu. 2. c. 19, and it seems evident that in his time the rule of praying and offering for none that died in a habit of sin began to be forgotten ‡.

* [Cf. Lyndwood, Provinciale, p. 164. gl. *Absolutione.*]

† [S. Aug. de cura pro mortuis, c. xviii. § 22. Op., tom. vi. col. 530, D.]

‡ [Among other glosses upon the above constitutions Lyndwood has the following:

*Memoriis.* i. e. Exequiis, de quibus habes 13. *q.* 2. *c. pro obeuntibus: et c. animæ defunctorum. et e. q. c. non æstimemus.* ubi patet ideo generaliter pro regeneratis omnibus solennes orationes

11. The lust of men is most prone to what is forbidden; therefore persons too near akin, or who cannot *de jure* be married on account of other impediments, yet often desire to be married *de facto*, that under colour of matrimony they may fulfil their unlawful desires; and yet being sensible that the impediments are known in the parishes where they dwell, because they find the priests of that parish not disposed to solemnize the marriage, on account of the notorious impediments, or the vehement rumour of them, they remove for a time to places far distant, and especially to cities or populous towns, and there procure marriage between them to be celebrated *de facto*, sometimes without publishing of banns, and at unseasonable hours and times, in churches, chapels, or oratories, and continuing there, or afterwards returning to their former home, they cohabit together as man and wife in an unlawful manner, to the perdition of their souls; because the ordinaries of the places, and others among whom they dwell, for fear of trouble and charge, will not or dare not impeach them for their unlawful coupling, nor publicly denounce their crimes: we therefore, desiring to extirpate this evil practice, by authority of this council do ordain that they who from this time forward do contract and solemnize marriage, while they know or have a probable suspicion of such impediments, and the priests who knowingly make solemnization of such prohibited marriages, or even of such as are allowed, between such as do not belong to their parish, (without first having obtained the licence of their diocesans, or of the curates of the parties contracting,) and they who by force or fear cause marriages to be [d]clandestinely celebrated in churches, chapels, or oratories; and such as are present at such solemnization, though conscious [Lynd., p. 275.]

fieri; quia non discernimus qui sunt hi, quibus prosunt, aut quibus non prosunt. Et ideo melius est, ut talia supersint his, quibus non obsunt nec prosunt, quam quod desint his quibus prosunt, ut ibi dicitur.

*Privatis domibus.* sc. Extra Ecclesias. Et idem intelligo in ecclesiis: nam eadem, imo fortior est ratio prohibitionis, scilicet evitandi malas conventiculas, et perpetrandi alia facinora; utputa, fornicationem, adulterium, et hujusmodi, quæ numerantur sub parte decisa. In his namque fortior est ratio quoad ecclesias, quas decet omnis sanctitudo. *de immunita. Eccle. c. decet. li.* 6.

*Nocturnas.* Diurnas autem non prohibet. Nam tenebræ ad male faciendum aptiores sunt. . . . Unde et furtum dicitur a *furvo*, i.e. *nigro*, quia sæpius de nocte fit. . . Et qui male agit, odit lucem.

*Vigilias.* Consimili ratione sublatæ vigiliæ, quæ solebant fieri in ecclesiis in vigiliis sanctorum, de quibus legitur 76. *dist. nosce.* Provinciale, p. 183.]

of the premisses, do incur the sentence of excommunication *ipso facto;* and that they be four times every year publicly pronounced excommunicate in general; and yet [e] coerced with other punishments appointed against such as celebrate marriage without banns first published, or otherwise in a clandestine manner. And because the constitution of Simon Mepham, of good memory, archbishop of Canterbury, our immediate predecessor, which begins, "Because inconveniences," &c., seems to many to be of [f] uncertain meaning toward the latter end, we, intending to put the sense beyond doubt, do by approbation of this council declare that it is so to be understood, that every priest, secular or regular, who presumes to be present at the solemnization of marriage at any other place but a parish church, or a chapel having of old parochial rights belonging to it, do *ipso facto* incur the punishment passed in that case.

[d] A marriage is clandestine, says Lyndwood, if it be without witnesses, if the bride be not demanded of him at whose disposal she is, and endowed according to law, and if the married couple do not abstain from each other two or three days in honour to the benediction, (yet he confesses there is no sin in these omissions,) or if it be done without banns. And he mentions three other instances from Hostiensis. 1. When one come to the age of puberty, but obliged to another, (by a promise made in his impuberty, I suppose,) contracts without licence of the Church. 2. When one marries in his impuberty, while a former contract of his is in dispute. 3. If one in puberty contract contrary to a special interdict. Yet in all these cases the marriage holds *.

[e] He that marries only without solemnity is to be punished lightly, says Lyndwood; but if the bridegroom know his bride before the solemn benedict, and making his oblation in the church, he is to be punished as a contemner of ecclesiastical custom; that is, as a transgressor of the divine will; (and the canon law here cited says as much, Dist. xi. c. 7.) But see how he goes on: they who contract without witnesses, deserve a perpetual excommunication. If marriage be contracted without banns, it is three years' suspension to the priest, discretionary penance to the parties married, according to c. 51 of the Lateran council, 1216 †. If one that is in puberty, but pre-engaged to another in his impuberty, marry, or contract without the licence of the bishop, he and they who are present, being conscious of it, are to be punished at discretion. If one in impuberty contract without the bishop's licence, it is null. *Sext.*, lib. iv. tit. 2. c. 1. If persons marry contrary to the special interdict of the Church, the penance is arbitrary, but the marriage holds. *Decretal.*, lib. iv. tit. 16, *per tot.* ‡

* [Lyndwood, Provinciale, p. 276. gl. *Clandestina.*]

† [Concil., tom. xxii. col. 1038.]

‡ [Ibid., gl. *Statutis a jure.*]

[f] The uncertainty consists in this, viz., whether parochial churches include parochial chapels. See Const. 8 of Mepham, 1328.

12. *By a perverse innovation it comes to pass that when prelates of churches make enquiry into the manners, offences, and excesses of their subjects, the great men and secular potentates, endeavouring to obstruct them in their office, do forbid their lay-tenants and villains to go out of the place of their abode to appear before them upon the ordinaries summoning them to undergo corrections in a canonical manner for their crimes and excesses, (though the correction of them is known to belong to them by law and custom,) or for their insinuating and proving testaments, or for the yielding up their accounts of their administration of the goods of defuncts; and do also hinder, or cause them to be hindered, from doing the same in [g]places belonging to their lordships, and do usurp to themselves a jurisdiction in [h]these points: others do indict for excessive extortion such ecclesiastical men as exercise their jurisdiction in laying [i]corporal or [k]pecuniary penances on their subjects for their faults and excesses, and in compelling them, 'as they may by their ordinary power†, to the performance thereof; or in accepting pecuniary commutations instead of corporal, in proportion to their faults, as justly they may: and they attach and imprison the persons so indicted, and compel them to make answer in these matters in their secular courts, and cause pecuniary mulcts to be laid upon them on this account unduly, as they please: and many oftentimes come together with tumult and clamour into the ecclesiastical courts, and terrify the judges and parties litigant, and such as have other business there to be dispatched; so that ecclesiastical jurisdiction is confounded, and the office of prelates is for a time set aside and obstructed: and impunity encourages transgressors to incur greater punishment still, and to lay themselves open to the arts of the old enemy: others cause many to be indicted, attached, imprisoned, and variously to be molested in the secular court, for bringing their causes, according to law and custom, to be tried in [Lynd., p. 260.]

* [Compare Conc. Prov. Ebor., A.D. 1466, Wilkins, vol. iii. p. 601.]

'† [sicut ordinarie ipsis licet, Lynd. sicut ordinariis ipsis licet, W.]

the ecclesiastical; as likewise the advocates who plead for them, the proctors and other ministers, and the ecclesiastical judges, who take cognizance in such matters: and they often lay heavy mulcts, and variously afflict and vex their tenants and others, to their great pains and charges, if they betake themselves to the ecclesiastical court for causes and matters which of right and custom are there to be handled, if they do not desist: others do unjustly obstruct, or cause to be obstructed, the bishops, when they are disposed duly to exercise their jurisdiction in the cities and other places subject to them, concerning such things which notoriously belong to them, or such as have the care of their lawful and canonical mandates for the exercise of their ecclesiastical jurisdiction, and the execution of them; and they presume to seize, beat, or injuriously to treat the messengers that carry such mandates, and that desire duly to execute them: some temporal lords also and their bailiffs, pretending falsely that the goods of such as are deceased within their districts are devolved to them, do hinder the ordinaries from converting such goods for the payment of the defunct's debts, and to other pious uses for the salvation of their souls, (as was of old ordained by consent of the [1]king and great men, in behalf of the ecclesiastical law and liberty,) to the great diminution of ecclesiastical right and liberty, to the obstruction and enormous impairing of the jurisdiction belonging to ecclesiastical men: we therefore, with the deliberate advice of this council, do pronounce them and every of them to be involved in a sentence of greater excommunication who offend in the premisses or in any of them, or that commit these things or any of them; or that give their consent, advice, aid, or favour to them, or that take such facts, or any of them, on themselves, or accept them as done in their behalf or name. And we reserve the absolution of them specially to the diocesans of the places. And we charge that such offenders be four times in every year publicly denounced excommunicate in general, in every parish church of our province of Canterbury.

[g] It is certain that by the ancient laws of this kingdom men of servile condition could not without their lords' leave go out of the bounds of the manor to which they belonged; and it should seem that this was thought

a just excuse for a villain's not appearing at the summons of the ordinary, and it seems plain, that to obviate this excuse, ordinaries did sometimes keep their courts in an ambulatory manner, in the place, wherever it was, where the offender lived.

[h] This I conceive is to be understood principally of the probate of wills, which many lords did always claim as belonging to themselves.

[i] Lyndwood here only* mentions fustigation as a corporal punishment to be inflicted by ordinaries, and says it should be executed more moderately on gentlemen than on those of a base condition.

[k] Though Lyndwood make no question but corporal punishment may be inflicted by ordinaries, yet he argues against pecuniary, and concludes that it may be done by such ordinaries as have power of dispensing with the crime of which the party is convicted, or by archdeacons, where there is a custom for their doing of it†. In another place (p. 52) he says they ought not to lay pecuniary penance on a man oftener than three times in one year for the same crime; for fear (I conceive) lest they should seem to act out of covetousness‡.

[l] Stat. 13 Edw. I.§

13. Secular princes, receiving their power from God, are wont by the terror of the sword, to force the haughty to that which the priests of the Church are not able to make them submit to: therefore it is a tradition of venerable antiquity, that if excommunicates arrogantly, with a hardened heart, abandon humility and reconciliation, the royal power, when invoked, with due rigour should give assistance against such rebels by confining them in gaol. But it sometimes happens that the bishops are commanded by the king's writ, (in behalf even of those who, being excommunicated for manifest offences, have been taken up and laid in gaol upon the prelate's certificate,) that if they who have been so taken up give security to stand to the commands of the Church and to obey the law, that then they cause them to be set free from the [Lynd., p. 264.]

* [This is a mistake; Johnson misunderstood the gloss to which the above note refers, and overlooked another on the same page, as may be seen by the following quotations:

*Pœnitentias corporales.* Ut puta, fustigationes sive disciplinationes, de quibus loquitur *c. fœlicis. de pœnis.* §. *cum autem. li.* 6. Et talis pœna corporalis major debet imponi vili quam nobili.—

*Pœnitentiis corporalibus.* Hæ quintuplices sunt. Nam una est jejunii sive abstinentiæ per macerationem, de qua habetur 90. *di. si quis contristatus.* Alia verberationis. 23. *q.* 5. *circumcelliones.* Alia servitutis 36. *q.* 1. *de raptoribus.* Alia publicationis omnium bonorum: 43. *dist. Adrianus.* Alia exilii 43. *dist. in synodo in fin.* De his pœnis plenius notatur per *Jo. in summa confess. li.* 3. *c.* 32. *q.* 1. Lyndwood, Provinciale, p. 261.]

† [Ibid., gl. *Pecuniarias.—Licet.*]

‡ [Ibid., p. 52. gl. *Pœna canonica.*]

§ [c. 19. Statutes of the Realm, vol. i. p. 82.]

gaols where they are kept. And if bishops do it not, (as they neither can nor are by law bound to do till due satisfaction is made,) then another writ is directed to the sheriff that he without delay set them at liberty, when he hath first taken such security of them. Farther, upon a suggestion to the king's court in behalf of an imprisoned excommunicate, that he is ready to obey the commandments of the Church, although this be not true, yet the sheriffs are commanded to let him out of gaol, without taking any notice of the parties at whose instance he is excommunicated. And sometimes upon a suggestion that the imprisoned are excommunicated in such a cause as belongs not to the ecclesiastical court, the sheriffs have a warrant sent them to let them forthwith out of gaol, if they are excommunicated in such a cause, and none other; and no credit is given to the process of the ecclesiastical judge as to the cause of the excommunication, but excommunicates in such cases are unduly enlarged, by which means the office of judges ecclesiastical is confounded, while laymen, wholly destitute of the key of power and knowledge, (who are under a necessity of obedience, insomuch that all authority of taking cognizance and giving commands in things of ecclesiastical jurisdiction is forbidden them,) do put their scythe into other men's harvest, and the sheriffs and bailiffs who set such excommunicates at liberty, and other friends, and many of the faithful by communicating with such excommunicates have their souls plaguily infected and [m]overwhelmed with dangers. Being zealously set against these practices, we ordain that the excommunicates in our province, who having been taken up do so make their escape out of prison, contrary to the liberties and customs of the Church of England, be publicly denounced excommunicates in a solemn manner in the most remarkable places, with bells tolling and candles [n]lighted, to their greater confusion and shame: and that all commerce with them for their own advantage, and the communion of the faithful, be utterly forbid them. And that such as unlawfully communicate with them be [o]smartly punished without respect of persons.

[m] Lyndwood here with approbation cites the opinion of Johannes Andreas, a notable canonist, viz., that it is a venial sin to communicate

with excommunicates, except in the following cases, viz., 1, when done in contempt of the keys; 2, or in contempt of the superior who passed the sentence; 3, when a man communicates with an excommunicate in his crime for which he suffers; 4, when he communicates with him whose partakers are excommunicate; 5, when he communicates with an excommunicate in things pertaining to God; 6, when he too frequently communicates with him*.

[n] Lyndwood in his gloss adds, and thrown down to the ground and trampled under foot†.

[o] With the lesser excommunication if they have not been particularly admonished to forbear his company, with the greater if they have been so admonished‡.

14. Because it is forbidden by the laws both [p]divine and secular, that laymen should have the disposal of things which belong to the Church, that scandalous usurpation is to be turned out of doors, by which some parishioners of our province of Canterbury, not knowing their own property and the bounds of it, or rather arrogantly going beyond them, do at discretion fell, pull up, or mow, the trees and grass growing in the cemeteries of the churches and chapels, without and against the consent of the rectors and vicars thereof, or of the stewards deputed by them; and apply them to the use of themselves, or of the [q]churches, or of other men, with a sacrilegious impudence, from whence daily arise great dangers of souls, contentions and grievous scandals between the prelates and their parishioners; we declare by authority of this council, that these rash scorners are involved in the sentence of greater excommunication passed in the [r]constitution of Othobon, legate of the apostolical see in England, and in the council of Oxford, against violators of ecclesiastical liberty. And we charge that they be according to the rites and canons publicly denounced excommunicate by the rectors or vicars, who perceive their churches injured as to these particulars by any such usurpation hereafter unlawfully made; and we decree that the usurpers aforesaid be repelled from the communion of the faithful, till they offer effectual amends, and do competently well perform it. [Lynd., p. 267.]

* [Lyndwood, Provinciale, p. 266. gl. *Cumulantur.*]

† [*Candelis accensis.* Supple, et in terram projectis ac pedibus conculcatis, 11. *q.* 3. c. *debent*, ibid.]

‡ ibid., gl. *Censura ecclesiastica.*]

[p] Lyndwood says the canon law is here called divine*.

[q] Trees in churchyards are to be cut down only for repairing the chancel or (by way of charity) the church, by the stat. of 35 Edw. I. c. 4. Under this pretence laymen, I suppose, took the liberty to cut down such trees. Lyndwood intimates that some copies of this const. had an additional clause, declaring that parishioners were not to cut down such trees without leave of the rector or vicar, but that this was not genuine †.

[r] See 12 const. of Othob., 1268; 1st of Langton, 1222.

[Lynd., p. 104.] 15. The impudence of perverse men erecting its rebellious crest, dares, with a contempt to all that is reverend, unjustly to violate sequestrations lawfully laid by bishops, or their [s]vicars general, or principal officials, for just and real causes, on goods ecclesiastical, or other, in cases permitted by law; insomuch that their canonical precepts are despised; that therefore such offenders may be restrained from their excesses, we ordain, with the deliberate advice of this council, that such [t]violators of things sequestered within our province, after, and in opposition to publication thereof openly made in the places where the things thus sequestered remain, do incur the sentence of greater excommunication *ipso facto*. [p. 114.] Yet, if an appeal be made, and lawfully prosecuted, from the sequestering judge, the possessors of the sequestered goods may freely and with impunity use them pending the appeal‡.

[s] Principal officials are for hearing causes only, vicars general for the exercise of all voluntary episcopal jurisdiction, excepting what the bishop reserves to himself, as collating to benefices, &c. See Bishop Gibson's excellent discourse on the distinction of these two offices, which have been of late years united, in his preface to the Codex §.

[t] They violate things sequestered who apply to their own use such valuable chattels as are by judge of court put into a third hand to be kept till it appears to which party in suit the said chattels belong.

[p. 97.] 16. The prevailing wickedness of the times, while the world is still waxing worse, causes the minds of men to exert the utmost efforts of malice; [u]insomuch that some of our province endeavouring to spite others do fraudulently and

* [*Divinis*, i. e., Ecclesiasticis, nam Jus Canonicum, Jus Divinum dicitur, ibid., p. 267.]

† [ibid., gl. *Ecclesiarum*.]

‡ [Si tamen a sequestro fuerit appellatum, et appellatio legitime prosecuta, ea pendente, possessores bonorum sequestratorum, et alii libere et impune utantur eisdem, W. Cf. Lyndwood, Provinciale, p. 114, 115, gl. *Sequestri*. —*Et alii*.]

§ [Codex Juris Ecclesiastici Anglicani, Introd. Disc., p. xxiii.]

maliciously obtain the king's warrant in actions of account, trespass, or such like, against those to whom they design mischief, [as being in] a county to which they do not belong, in which they never were, or had any dealings, or committed any offence, or did business for any man; and so prosecute them who know nothing of the matter, that they are [u]outlawed or banished out of the kingdom*. Now because process and sentence against such as are ignorant and defenceless is justly condemned by the law; nor should men's malice be indulged; we ordain that whatever clerks or laics in our province do for the future surreptitiously, fraudulently, and maliciously obtain, prosecute, cause or procure such proceedings; or that do knowingly give their advice, help, or countenance, or take them on themselves, as done in their name, they do *ipso facto* incur the sentence of the greater excommunication.

[u] Here I follow Sir H. Spelman, and Lyndwood's copy was here the same with that when he wrote his gloss, though now it is *relegantur* for *utlagantur*. These were gross abuses and deserved a censure, though the proper redress of such evils was in parliament.

We charge that the constitutions of this council and the provisional remedies be inviolably observed for the future in our province of Canterbury, and do enjoin our fellow bishops, and all suffragans, and command them to publish them, and to cause them to be published by others, as the law requires, and to be made known to all for the common utility, the praise and glory of the name of Jesus Christ. May He extirpate vice, and graft virtue on His Church, and direct the government of the kingdom of England, grant peace and cherish concord. Amen. [Lynd., p. 18.]

[*] [unde nostræ provinciæ nonnulli aliis malignari conantes, brevia regia de computo, seu de transgressione, vel alia contra illos, quibus nocere desiderant, ad extraneos comitatus, in quibus sui nunquam fuerint adversarii, nec contraxerint, vel deliquerint ibidem, bonave administraverint inibi cujuscunque, fraudulenter et malitiose impetrare præsumunt, et adeo contra eos ignorantes clam prosequuntur in illis, quod utlagantur vel foris banniuntur a regno. W.]

## A.D. MCCCXLVII.

### ARCHBISHOP ZOUCHE'S CONSTITUTIONS.

LATIN. Sir H. Spelman, vol. ii. p. 603. [Wilkins, vol. iii. p. 69*.]

WILLIAM la Zouche, archbishop of York, published the following constitutions at Thorpe, near the city of York, in a provincial council there holden: John Thursby, his immediate successor, gave them a new sanction, and from his constitutions only we have them.

William, by divine permission, &c. When we diligently consult the good and ease of our subjects, then we believe we exercise the pastoral office. Earnestly considering of late the difficulties and excesses which stipendiary chaplains have, and do occasion in [a]agreeing for, and receiving their annual stipends, by reason of the scarcity of such chaplains; and earnestly desiring to restrain and moderate these difficulties and excesses as far as by God's help we can; for the good of such of our subjects as are willing to hire such stipendiaries, we have thought fit that it be ordained, [b]with the advice of our assistants well learned in the law, after full deliberation, that all and singular chaplains already ordained, or hereafter to be ordained, be content with the underwritten wages, under the penalty mentioned below, viz., that no chaplain, although he is to be [c]parochial, take of any man in any wise for his annual stipend above the sum of six marks, either in money numbered or in other things: which stipends are known to be [but] sufficient, all things considered, especially during this scarcity of chaplains. And we forbid all and singular such chaplains ordained, or to be ordained, that any of them take more than the sum before taxed for his annual stipend, under pain of suspension from celebrating divine offices for one year; which said suspension we have decreed, that he

* [See below, A.D. 1367.]

who receives more do incur *ipso facto*. We farther forbid all and singular rectors, prelates of churches, vicars, and other ecclesiastical persons who have chantries, chapels, oratories, hospitals, or other ecclesiastical benefices whatsoever within our [d] diocese, in virtue of holy obedience, and under pain of forty shillings to be applied to our [e] almnery*, to permit any one to celebrate divine offices as stipendiary chaplain in their churches, chapels, chantries, or other benefices, unless he be content with the sum of six marks for his annual stipend. And we in the same manner, and under the same penalty, forbid all and every of the aforesaid to admit or permit any one to celebrate anniversary or peculiar masses in their churches, chapels, chantries, hospitals, oratories, or any ecclesiastical places within our diocese whatsoever; till the parish churches are first provided with parochial chaplains at the rate before taxed: and lest these cur ordinances, prohibitions, and statutes should through disuse† lose their effect, we will and ordain by this writing that diligent and exact enquiry be made every synod, to be celebrated in our church of York every Easter and Michaelmas, and at other seasonable times every year, 'to the intent that they who observe not the premisses be punished as is [f] below directed‡; and otherwise according to canon. Yet we intend not by these our ordinances and statutes, occasioned by the scarcity of chaplains, to derogate from a synodal constitution published in former times, concerning the stipends to be received by hired priests.

[a] I read *conventione*§ not *convect*——

[b] By this and several other particulars it appears that this and the three following constitutions were first made in a diocesan synod, and that when they were enacted into provincial constitutions by this council the unskilful scribe did not make proper alterations.

[c] The parochial chaplain seems to be a curate by the following part of this constitution.

[d] See note b.

[e] I read *eleemosynariæ* not *eleemosynæ*.

[f] It should be "above directed," unless this constitution be maimed. And

* [Johnson *omits*, seu abusum, W.]

† [et sub pœna quadraginta solidorum eleemosynæ nostræ applicandorum, W.]

‡ [ad effectum ut præmissa non observantes pœnis supra scriptis, et aliis, prout expedire videbitur, canonice puniantur, W.]

§ [So Wilkins.]

this as well as the rest of these constitutions hath had ill fortune in falling into the hands of ignorant or thoughtless transcribers.

2. Whereas by means of women's and nurses' laying little children in bed by them, the said children are often overlaid and suffocated; and so death proceeds from them of whom the perfecting of their life was expected; now we forbid fathers, mothers, nurses, and all that have the custody of infants, to lay them in the bed together with themselves, but in cradles, or other secure places apart, where there is no fear of suffocating them; and that in giving them suck they do by no means fall asleep upon their cradles.

3. Although the earth be the Lord's, and the fulness thereof, yet He hath graciously granted it to be tilled and manured by His people; but hath reserved the tithes of their fruit and labour to the priests and levites, who are pre-elected as the Lord's portion to minister in the churches: by virtue of which reservation the rectors of churches and ecclesiastical persons freely take the tithes of sheaves, and other things within the parishes committed to them, and have freely carried, or caused to be carried, the said tithes by and through the same places, by and through which the owners of the farms do and have carried away the nine parts of such sheaves, or caused them to be carried by others; and the said rectors and ecclesiastical persons have been in possession of this *quasi* liberty peaceably, continually and quietly, for time beyond the memory of man; yet some degenerate sons of holy mother Church, not considering the heavenly favour in giving them nine parts, do obstruct the ministers of Christ in divers manners by exquisite malicious inventions in the free taking of the tenth part: some [permit] them freely to take the tithes [but not] to carry them by the accustomable ways and roads; but maliciously compel them to be carried by long round-about windings and turnings; others do not permit the sheaves, though set out and marked for tithe, to be carried off their lands while any of their own corn remains there, and fraudulently permit the tithes knowingly to be trampled on, and consumed by their own and other men's beasts; and do not permit the rectors to give orders concerning such tithes, to the offence of the divine

Majesty, the notorious violation of ecclesiastical liberty, the great damage and grievance of the rectors and ecclesiastical persons, and to the pernicious example of others: desiring therefore, according to our duty, to make wholesome provision against such malice and wrong wickedly committed in contempt of God and the Church, by the oracle of these presents we firmly forbid that any one of what condition, quality, or degree soever, do hinder or disturb, or cause to be hindered or disturbed, rectors of churches or other ecclesiastical persons, their servants or ministers, from wholly and freely taking the tithes of sheaves, hay, and all other things whatsoever belonging to them and their churches, whensoever or wheresoever arising, unconsumed by beasts, undiminished by any other means wilfully used to the damnifying of them; and to carry them through such places as the nine parts are accustomably carried, and to dispose of them at their own discretion, under pain of the greater excommunication, which we will that all and every transgressor do incur *ipso facto*.

4. Contains the prohibitive part of Archbishop Stratford's ninth constitution, A.D. 134½, though in different words, yet to the same sense, and adds, "It had been forbidden that such alienations or donations should be made for the future, under any colour, or by what contrivance soever, by the provident deliberation of a provincial council celebrated in the chapter-house of our church of York:

*Then he proceeds to the penal part in these following words,* viz.

And because experience teaches that a general prohibition does not reclaim such as are given to mischief, unless they be restrained with fear of punishment, we, by the authority of this synod, do lay all and singular who give their advice, help, or countenance to such donations or alienations under a prohibition from entering into the church *ipso facto*. 'And let such as so give or alienate their goods in the [g]diocese aforesaid for their grievous excesses be deprived of ecclesiastical burial, [if] there be proof of any fraud, or malice—

[g] See note b, const. 1.

The remainder is partly unintelligible, partly a repetition of what had been said before*.

5. Whereas all show of corporal levity ought to be far from the sacred order, it is utterly forbid by the sacred canons [and] fathers under heavy punishments and censures, that ecclesiastical men in holy orders, especially priests, (whose behaviour is soon imitated by the laity, to whom they ought to be a pattern of good life,) should wear clothes ridiculous and remarkable for their shortness, or seek glory from their shoes, but study to please God and man by the habit of their bodies and the state of their minds, and shew their inward by their outward decorum; so that nothing may appear in them offensive to the eyes of the beholders; for as the [Ecclus. xix. 29, 30.] [h]Scripture says, an incomposed body shews the disposition of the mind, and indecent apparel vilifies them that wear it, and scandalizes the weak spectator: yet many clerks in holy orders, and priests, forgetting their dignity, office, and order, do manifestly apparel themselves contrary to the constitutions, and the penalties thereby ordained, in clothes so short as not to come down half way of the legs, or even to the knees, contrary to decency and the honour of the sacerdotal order, out of an affectation to shew their shapes and the looseness of their manners; and they do not desist daily and publicly to do so, to the hazard of their own souls, the scandal of the clerical order and Church, and evil example of others, Christ's faithful people: therefore this provincial council, desiring to put a stop to these affectations and to the danger of souls, hath decreed and ordained that all punishments and censures whatsoever provided by such constitutions, canons, and statutes in what manner soever, be put in execution against such offenders.

[h] I do not find any such words in Scripture, but there may be something like it in Ecclus.

6. Because many [i]archdeacons, deans, abbots, and other

[i] * [Donantes insuper et sua bona in nostra diœcesi prædicta taliter alienantes propter sui gravitatem excessus ecclesiastica careant sepultura, pactum autem fraudis seu malitiæ in hoc casu ipso facto probatur intervenisse conventum, quoties aliqui omnia bona sua, quocunque titulo, ut præmittitur, alienant inter vivos; vel in tam immensa quantitate, quod ecclesiæ, regi, creditoribus, uxori, et liberis satisfieri non poterit de residuo, sicut juris ratio exigeret, et consuetudo, si hujusmodi alienatio facta taliter non fuisset. W.]

ecclesiastical men pretending to have jurisdiction, and the cognizance of matrimonial causes, are not ashamed to put in commission simple and unskilful men now of late for the examining and determining such matrimonial causes (which ought beyond all other causes to be more diligently debated, and more maturely determined) contrary to sacred sanctions and the institutes of holy fathers; and do make such insufficient persons, and even [k]laymen officials, commissaries, or guardians with power of hearing matrimonial causes, to the hazard of their own souls and the prejudice of the commonwealth; and these officials or guardians do substitute others insufficient and unskilful (by the intervention of a sum of money sometimes) to take cognizance of matrimonial causes between some certain persons, and to determine them, insomuch that these officials or guardians by themselves or by their commissaries do not only hear causes of matrimony and divorce, but pass unjust and in many respects indiscreet definitive sentences, from which we know by experience, that not only scandals but danger of souls does daily arise; now we, [l]John, archbishop*, with advice of our suffragans and clergy assembled in a provincial council, desiring to put a stop to such scandals and dangers, so far as by God's help we can, following the holy fathers and sacred canons, do firmly forbid and prohibit all and singular archdeacons, deans, abbots, provosts, and other ecclesiastics whatsoever that have jurisdiction in our city, diocese, or province of York, and their officials and guardians of spiritualities deputed, or to be deputed, that they the aforesaid presume not to make or substitute, to take cognizance of causes of matrimony or divorce, as to what concerns the contract, any others than fit, provident, faithful men learned in the laws, or at least competently well exercised in judging such causes; and that they do not give definite sentences anywhere else than in the chapters to be celebrated by them, under pain of suspension to the archdeacons, deans, abbots, provosts, and others claiming ecclesiastical jurisdiction, and under pain of the greater excommunication to the officials, who substitute insufficient men in the premisses, and to the said insufficient commissaries, who knowingly accept such [deputation] and

* [Nos Johannes archiepiscopus, W.]

do hear such causes; and we will that all and singular the aforesaid, who knowingly or through gross affected ignorance presume to transgress this constitution, and do not effectually observe it, do *ipso facto* incur the punishments declared by this constitution, as is above more distinctly and fully expressed.

[i] By this it should appear that archdeacons had cognizance of matrimonial causes in the province of York.

[k] From hence we may see the original of lay-chancellors.

[l] It should certainly be William, but the scribe's thoughts were on John Thursby, who re-enacted these constitutions.

7. Although the sacred canons forbid clandestine marriages (as dangerous to the souls and bodies of men bringing damage to the contractors and the common-wealth) under grievous penalties; yet some contriving unlawful marriages, and affecting the dark, lest their deeds should be reproved, procure [m]every day, in a damnable manner, marriages to be celebrated without publication of banns first duly and lawfully made, by means of chaplains that have no regard to the fear of God and the prohibition of the laws, without any dread of the penances passed and published against such as contract marriages in this manner, or celebrate or are present at them. We therefore, the archbishop aforesaid, with the consent of our suffragans and clergy, desiring to repress the impudence of such chaplains and of the parties contracting, and of others who procure the solemnization thereof by an accumulation of punishments, do prohibit all the forementioned, under pain of the greater excommunication, which we will that all of the city, diocese and province, who transgress this constitution do incur *ipso facto;* and let no priest of what condition soever, whether secular or regular, celebrate or be present at a clandestine marriage; but let banns be first published for three solemn days, as often as marriage is to be solemnized between their parishioners, in the churches or chapels to which the contracting parties belong, a sufficient time being assigned for the making objections, if any can and will do it; and let the priest, notwithstanding this, enquire, whether there be any impediment, or whether any one declares

against, or contradicts it in any wise: and if any objection or probable suspicion do appear against their coupling together, let the contract in no wise be celebrated, but expressly forbidden, till a competent judge have declared in a legal manner what ought to be done; [n]or else, till the parties contracting are dispensed with by the licence of the superior ordinary, as to the intervals of time, [and] the publication of banns. And we reserve to ourselves within our city and diocese, and the persons thereunto belonging, and to our suffragans in their cities and dioceses, or to our superiors, the absolution of all those who incur these punishments, or any of them, excepting at the point of death ([o]as touching such impediment): and we declare all sentences pronounced in causes of matrimony or divorce, in any wise contrary to the tenor of this constitution, to be null and void, so as not to have the name or effect of sentences, when passed by such persons; with a saving to the constitutions of [p]Otto, legate of the apostolical see in England, providently published in regard to the cognizance of such causes; and all other canons, constitutions and statutes, published in relation to the premisses, from which we intend not to derogate in any respect, but desire that they be observed.

[m] I read *indies* *, not *Judæis*.

[n] Lat., *vel alias de superiore ordinare licentia cum contrahere volentibus quoad temporum interstitia bannorum editionem fuerit dispensatum* †; which I thus read, *vel alias de superioris ordinarii licentia cum contrahere volentibus quoad temporum interstitia, et bannorum* ‡, &c. If my conjecture stand, here is a proof of licences for marrying without banns two hundred years before the Reformation. And I am persuaded, that the words cannot reasonably be so altered, as not to be a proof of this practice. Licences of this sort were always restrained to the superior ordinaries, that is, bishops, in places not exempt. The interstices, or intervals of time are meant of the term fixed by him that published the banns for making the objections mentioned just before in this constitution; and I cannot but wish that such a fixed term had been always indispensably observed.

[o] I know not the meaning of these words, as here placed.

[p] See constitution of Otto 23, 1237.

And lest these ordinances, constitutions and prohibitions in the premisses, lose their effect through disuse §, (which

* [So Wilkins.]
† [Spelman, vol. ii. p. 606.]
‡ [So Wilkins, vol. iii. p. 72.]
§ [Johnson *omits*, seu abusum, W.]

God forbid,) we will, ordain, and command all our subjects by this writing, under the penalty aforesaid, that in every chapter celebrated in every deanery, in cities and other proper places and times, all the premisses be read and solemnly published by the deans; and that every year diligent and exact enquiry be made and had in the premisses, to the intent that they who do not observe them may have the punishments abovesaid, and other punishments, as shall be thought expedient, inflicted on them, according to canon. And lest rectors, vicars, and other our subjects of the clergy and people should pretend their ignorance of the premisses, we enjoin all and singular rectors and vicars, in virtue of obedience, and under the penalties aforesaid, that they and every of them have and take true copies of all the premisses within two months after the publication hereof notified to them, and observe all and singular of them, in all and every of the articles, and do publicly intimate and explain them every Lord's day to their parishes and subjects, as they desire to avoid canonical vengeance. In testimony of all which, we have caused our seal to be hereunto put. Dated at Thorp near York, as to the sealing thereof, on the last day but one of the month September, A. D. 1347*, and the fifteenth of our consecration†.

* [Rather A.D. 1367. See Wilkins, vol. iii. p. 68, 69, 72.]

† ["Hucusque codex rev. episc. Assaven." Wilkins, vol. iii. p. 72, note a. The other MS., Cot. Vitell. D. 5, according to Spelman and Wilkins, contains two more constitutions, the first a modification of the clauses of excommunication with respect to matrimony, and the second a statement of cases of confessions reserved to the archbishop of York and his penitentiary, as below, A.D. 1363, 4, 5.]

## A.D. MCCCLI.

### ARCHBISHOP ISLEP'S CONSTITUTION.

A CONSTITUTION of the lord Simon Islep, archbishop of Canterbury, published at Lambeth, on the twelfth kal. of March, A. D. 1351, in the reign of King Edward III., and the pontificate of Clement VI.

LATIN. Sir H. Spelman, vol. ii. p. 597, not extant in Lynd. [Lynd. app., p. 54. Wilkins, vol. ii. p. 13*.]

Simon, by divine permission archbishop of Canterbury, primate of all England, legate of the apostolical see, to our venerable brother lord Ralph, by the grace of God bishop of London, health and brotherly charity in the Lord. When we lately in a parliament royal holden at London, insisted upon a due reformation of some injuries at which we could not connive, done to God and the holy Church; for that secular judges putting their scythe more than usually into God's harvest, notoriously exceeding the bounds of their judicial power, and usurping a power over the Lord's bishops[1], who are by no law subject to them, in criminous cases, are not afraid to condemn and deliver such as are notoriously, publicly and commonly known, and by themselves and others esteemed clerks, and even priests, nay and religious too, after they have first ensnared and indicted them for several crimes and misdeeds, to a shameful and unwonted death, to the contempt and scandal of God and holy Church, and the grievous hazard of their own souls; [a]it was there objected, (by way of reply, and that very grievously on account of the specious appearance of the answer,) and that by the king himself, as well as noblemen and commons in conjunction with them,

[1] [christos Domini.]

* ["*Literæ archiepiscopi Cant.* pro *clericis incarceratis, ad asperam pœnam ponendis.* Ex reg. Islip. fol. 54. a. collat cum MS. colleg. B. M. Magdal. Oxon. n. 185."

To the foregoing title Wilkins appends this note:

MS. Oxon. hunc habet titulem: "Forma ad literandum incarceratos clericos de carceribus episcoporum. Et est domini Simonis Cantuar. Archiepiscopi."]

that clerks strengthen themselves in their wickedness, under pretence of their privilege, and when they are taken in their crimes, or at least justly indicted and convicted, according to the custom of the kingdom, before a secular judge and upon demand made in due manner by the prelates, or their competent ordinaries, or their commissaries, they are surrendered to God and the holy Church, and to the demandants, with reverence; they are with so much backwardness and favour committed to gaol, and are so deliciously fed there, that the prison intended for a punishment of their crimes, is turned into a refreshment and delicious solace, and they are pampered in their vices by ease and such incitements, and yet make their escape out of custody as injurious to them. 'And some notoriously infamous criminals, that are in truth wholly without excuse, are yet so easily admitted to their purgations[b], that every [clerk] thus delivered [by the secular judge] hath sure hopes of returning to his former evil life, by one means or other*; so that not only the clerks thus purged become more wicked than ever, but innocent clerks by such easiness and neglect, are encouraged to become criminous, to the great infringement of the peace of the kingdom. Whereupon we, considering the premisses and other particulars, lest the abuse of ecclesiastical liberty, which so abounds as to put the whole kingdom into a disturbance, should turn to the prejudice of clerical privilege, with the advice and consent of our brethren present in the said parliament, and of the proctors of the absent, have thought fit thus to ordain concerning the imprisonment of clerks; that is, let our brethren and other ordinaries of places, and ecclesiastical judges of the province of Canterbury, to whom the receiving and imprisonment of clerks of custom belongs, take care that clerks thus delivered, or to be delivered for the future on account of the premisses, according to the liberty of the Church, to be kept in gaol, be closely imprisoned with all proper care and expedition, according to the quality of the persons, and

' * [nonnulli etiam flagitiosi, notorii et famosi, de quibus nulla suppetit veritas excusandi, ad purgationes suas, procuratas et suspectas, adeo faciliter admittuntur, quod cuilibet sic liberato, ut plurimum, spes firma tribuitur, uno modo vel alio ad vitam pristinam redeundi; W.]

heinousness of their crimes, that they may not to the scandal of the Church return to their former way of life, from an imprisonment intended for a punishment. And if any clerks so delivered are notoriously infamous malefactors, or guilty by their own confession, of felonies, or other grievous crimes; and so publicly defamed, that they cannot deny that the crimes were committed by them, or that their enlargement would bring manifest scandal to the Church and her liberty, or to the tranquillity of the kingdom, that then every Wednesday, Friday and Sabbath-day, they be allowed once a day only bread and water of affliction; on other days, bread and small beer; but on the Lord's day, bread, beer, and pulse, for the honour and eminence of that day. And let nothing else be given them by way of alms or gratuity from their acquaintance or friends, or for any pretence or reason whatsoever: nor let any purgation be granted to them. But, if any so imprisoned be innocent, or not grievously suspected of the misdeeds charged upon them, nor notoriously guilty by their own confession, nor publicly defamed, as is abovesaid, then we will that such caution be used, that there be no proceedings made toward their purgation in a judicial manner, till diligent enquiry be first made by the ecclesiastical ordinaries or judges competent in this respect concerning their way of life, reputation, behaviour, conversation in the place of their birth, and where the crime for which they were indicted and imprisoned was committed, without giving any warning of this enquiry to their acquaintance or friends. And if the place of the birth, or of the crime of the imprisoned clerks be not within the diocese of the ordinary judge ecclesiastical, in whose prison they are kept, then upon the desire of the said ordinary, let the ordinary judge ecclesiastical of the places of the clerks' birth, or where the crime is pretended to have been committed, be bound to make enquiry concerning the manner of life, reputation, behaviour, and conversation of the said clerks, and to certify the ordinary that sent, or signified his desire to him concerning the premisses. We therefore command and strictly enjoin you to observe all and singular the premisses so far as you are concerned; and that ye in our stead by our authority enjoin (by your letters containing a copy of these presents) every one of our

fellow-bishops and suffragans that they effectually observe the same: and we command that our brethren before the feast of St. John Baptist, do certify us what they think fit to do in the premisses. Do ye also certify us before the said feast what ye have done, or thought fit to do in this respect. Dated at Lambeth, 12 kal. of March, A. D. 1351, and of our consecration the third.

[a] Here the points and particles are misplaced both in Sir H. Spelman and the Oxford copy.

[b] *Procuratas et suspectas* are here added in the original, to what purpose I see not.

## A.D. MCCCLIX.

### ARCHBISHOP ISLEP'S CONSTITUTION.

LATIN. [Sir H. Spelman, vol. ii. p. 599. Lynd. app., p. 55. Wilkins, vol. iii. p. 42*.]

THE constitution provincial of the lord Simon Islep, archbishop of Canterbury, published at Otteford, A.D. 1359, in the thirty-fourth year of the reign of the most glorious Edward the Third, king of the English, and the eighth year of the pontificate of Innocent the Sixth.

Simon, by divine permission archbishop of Canterbury, primate of all England, legate of the apostolical see, to our venerable brother the lord Michael, by the grace of God bishop of London, health, and brotherly charity in the Lord. Catholics are enjoined by wholesome precepts supported by divine institution, to pray for one another, that so all of them may be saved, and receive a reward so much the greater, as their prayers were more importunate; and not only the necessity of him that prays, but public utility and fraternal charity recommend this duty to us. Whereas the most excellent prince, our lord the king of England, is now going to make an expedition in foreign parts with his army for the recovery of his right, exposing himself as a soldier to the doubtful events of war, the issue whereof is in the hand of God; we who have hitherto lived under his protection, are by the divine favour shining on us, admonished to betake ourselves to prayer, as well for the safety of every one of us as for the public good, lest if adverse fortune should invade us (which God forbid) our confusion and reproach should be the greater. But though it is provided by sanctions of law and canon, that all Lord's days be venerably observed from eve to eve, so that neither markets, negotiations, or courts

* ["*Mandatum archiepiscopi Cantuar. de exorando pro rege, et de observando dies dominicos.* Ex reg. Islip. fol. 150. b."]

public or private, ecclesiastical or secular, be kept, or any country work done on these days, that so every faithful man remembering his creation may then at least go to his parish church, ask pardon for his offences, supply his omissions and commissions for the whole week, honour the divine mysteries, learn and keep the commandments of the Church there expounded, and earnestly pour out prayers to God in the churches that are consecrated from above for places of prayer, not only for themselves but for every degree of men, whether of the secular or ecclesiastical host, laying aside all worldly care: yet we are clearly, to our great heart's grief, informed that a detestable, nay damnable perverseness has prevailed; insomuch that in many places markets not only for victuals but other negotiations, (which can scarce be without frauds and deceits,) unlawful meetings of men who neglect their churches, various tumults, and other occasions of evil are committed, revels and drunkenness, and many other dishonest doings are practised, from whence quarrels and scolds, threats and blows, and sometimes murder proceeds, on the Lord's days, in contempt of the honour of God; insomuch that the main body of the people flock to these markets, by which the devil's power is increased; and in the holy churches (where the God of peace is to be sought, and His anger more easily satisfied) the worship of God and the saints ceaseth by reason of the absence of the faithful people, the sacred mysteries are not had in due veneration, and the mutual support of men in praying is withdrawn, to the great decay of reverence toward God and the Church, the grievous peril of souls, and to the manifest scandal and contempt of Christianity: wherefore we strictly command you, our brother, that ye without delay canonically admonish, and effectually persuade in virtue of obedience, or cause to be admonished and persuaded, those of your subjects whom ye find culpable in the premisses, that they do wholly abstain from markets, courts, and the other unlawful practices above described, on the Lord's days, for the future; and that such of them as are come to years of discretion do go to their parish churches to do, hear, and receive what the duty of the day requires of them: and that ye restrain all whatsoever that transgress and rebel in this respect, both in general and par-

ticular, with Church censures according to the canon. And do ye farther enjoin your flock subject to you, and cause them to be enjoined, that on the said days, and at other times when they think fit, they do [a] in their prayers at church most devoutly recommend our lord the king, the noblemen of the kingdom, and all others whatsoever that attend him in the said expedition, and their safety and prosperity, to the Lord most high, the King of all kings; and make two customary processions about their churches and churchyards every week for them, and for the peace of the kingdom. And we farther command you that ye intimate this our mandate with all possible speed to our fellow bishops and suffragans of the province of Canterbury, that they may do what is above contained in relation to their subjects. And that the minds of the faithful may the more easily be incited to the doing of the premisses, confiding in the mercies of God, and in the [b] merits and prayers of His most holy mother, the Virgin Mary, and of blessed Thomas, the glorious martyr, and of the other saints, we grant by these presents forty days' [c] indulgence to all Christians throughout our province, who shall pray in the manner aforesaid, and abstain from the unlawful practices above expressed; so that they confess their sins and truly repent of them. And we do in the Lord exhort you and the rest of our fellow bishops, that ye grant indulgences out of the treasure of the Church entrusted with you to them that do and observe what is above specified. And do ye before the feast of All Saints next coming certify us by your letters patent (containing a copy of these) of the day when ye received these presents, and the manner and form of your executing thereof; and do ye specially enjoin our said brethren, that they do every one in particular take care to certify us of what they have done in like manner. Dated at Otteford 19 kal. of September, A.D. 1359, and of our consecration the tenth.

[a] We are informed that during the reign of this king, writs called *de orando pro rege et regno* were issued at the beginning of the parliaments. Here we may see how these prayers were performed, viz. by leaving it to every man's private devotions in the church, not by drawing or enjoining any new forms. The most that was required of the priests was to add *pro*

*rege et regno* in the canon of the mass; or if *pro rege* was used here of course (which is not certain) to add only the word *regno* *.

[b] The mercies of God and the merits of the saints are too disproportionable to be put, as they here are, upon the same level: and the Blessed Virgin is here unequally yoked with Thomas Becket.

[c] Take nothing and hold it fast. He that has indeed repented of his sins may be sure of the divine indulgence; he that has not, by father Simon's tacit confession, could be never the better for this archiepiscopal bounty.

* [See in Johnson's Canons, vol. i. A.D. 740. 7, A.D. 747. 15. 30, and p. 262, 3, note l.]

## A.D. MCCCLXII.

### ARCHBISHOP ISLEP'S CONSTITUTIONS.

1. The constitutions of the lord Simon Islep, archbishop of Canterbury, published A.D. 1362, Edward III. being king of England, Urban V. pontiff. Latin. [Lynd., p. 238. Sir H. Spelman, vol. ii. p. 610. Lynd. app., p. 56. Wilkins, vol. iii. p. 50*.]

[a] Simon, by divine permission archbishop of Canterbury, primate of all England, legate of the apostolical see, to our venerable brother the lord Simon, by the grace of God bishop of London, health, and brotherly charity in the Lord. The unbridled covetousness of men would grow to such an height as to banish charity out of the world, if it were not repressed by justice. We are certainly informed by common fame and experience, that modern priests, through covetousness and love of ease, not content with reasonable salaries, demand excessive pay for their labour, and receive it; and do so despise labour and study pleasure, that they wholly refuse, as parish [b] priests, to serve in churches or chapels, or to attend the cure of souls, though fitting salaries are offered them, that they may live in a leisurely manner by celebrating [c] annals for the quick and dead; and so parish churches and chapels remain unofficiated, destitute of parochial chaplains, and even proper curates, to the grievous danger of souls; and the said priests, pampered with excessive salaries, discharge their intemperance in vomit and lust, grow wild, and drown themselves in the abyss of vice, to the great scandal of ecclesiastics and the evil example of laymen [d]. [We therefore desiring a quick cure of this plague, do with the advice and consent of our brethren, enact and ordain that all unbeneficed chaplains, especially such as are qualified for parochial churches and chapels, and the cure of souls, be bound to officiate and attend them at the moderate salaries men-

* ["*Constitutio venerabilis domini Simonis Islip, Cantuar. Archiepiscopi edita apud Lambethe*, A. D. 1362. Ex MS. Cott. Otho A. 15. fol. 135. A."]

tioned below, postponing all private and peculiar services of any persons [e] whatever, when required by the diocesan or any ordinary judge, competent in this respect. And if they neglect to comply for twenty days, let them know, unless there be a lawful impediment, that they are thereby to incur suspension from office.] And we enact and ordain that chaplains, and they who celebrate annals, and all who do not attend the cure of souls, be content with five marks; but such as officiate in parish churches and chapels, and the cure of souls thereunto belonging, with six marks for their annual stipends; unless the diocesans, in regard to the largeness of the parish, or for some lawful cause, do otherwise in their discretion determine. And if any priest of our province, under any colour whatsoever, receive more by the year, or in proportion for any part of the year, let him *ipso facto* incur the sentence of suspension from his office, unless, within a month, he pay what he received over and above that sum, to the fabric of the church in which he celebrated. And let him who pays it, if he be an ecclesiastical person, forfeit the doubles of what he so paid over and above, to be converted to pious uses at the discretion of the diocesan. And that the priests may be abridged of their opportunities of wandering, and that their lives and manners may more certainly be known, we will and ordain that no priest who removes from one diocese to another, be received unless he shew commendatory letters from the bishop of the diocese where he last dwelt to the diocesan of the place into which he is now come. But we do especially reserve to ourself and our brethren the diocesans of places, the absolution of those who have incurred the said sentences of suspension, which [f] [sentences] we declare (for the sake of simple men, and such as are ignorant of the law) by these presents to be binding, according to the exigency of the canons, from the time of the publication of the premisses. We commit and firmly enjoin the speedy publication of all and singular the premisses, and the execution thereof within your diocese to you, our brother. And do ye take care to certify us what you have done in this respect by your letters patent (containing a copy of these presents) before the feast of the Purification of the blessed Virgin Mary next coming. Dated at Lam-

beth, 16 kal. of December, A.D. 1362, and of our consecration the thirteenth.

[a] Sir H. Spelman, p. 610 and 611, has two copies of this constitution, which differ very little from each other, saving that the first of them is directed to the bishop of London, and bears date 6. id. November; the other is directed to no particular bishop, but bears date as the Oxford copy does, 16 kal. December.

[b] See Corb., 5, 1127.

[c] Daily masses said for a year together for some certain persons, or a family; Bishop Grosthead calls them *annualia*. Fasc. Rer., p. 411*.

[d] Lyndwood has only so much of this constitution as is inclosed in hooks.

[e] Yet Lyndwood here undertakes to prove that the priest could not be obliged to desert any temporary service in which he was engaged, unless he could have better, or at least equal pay †. He undertakes to prove it from the text of the canon law, which he supposes to be of greater authority than provincial councils; and though the places to which he refers do not prove what he intends, yet we are not to wonder if his opinion prevailed; for it is contrary to common justice to force men to take places of less value in lieu of those that are of better, unless the person so treated be a criminal, whereas in this case merit was the occasion of their suffering; for such as deserved cure of souls were the men against whom this constitution was particularly aimed. Lyndwood supposes that some of these mass-priests had ten marks *per annum* by the will or statute of the founder; nay, in the year 1375 ten marks were not thought sufficient, but five marks and a half were added to it.

[f] The Oxford copy and the last of Sir H. Spelman, has *quos*, as if it related to the men foregoing; but the first has *quas*, which clearly determines it to the sentences, and renders the clause intelligible ‡.

Here follows in the Oxford copy another edition of the same constitution. It seems to me that the archbishop found the former ineffectual, by reason of its attempting to pin them down to so short an allowance, and its obliging them to leave a better salary for a worse; therefore in this he allows a greater latitude. This is without date or inscription.

2. "The unbridled covetousness," *&c. to* "experience" *as above*. The priests that now are, not considering that they have escaped the danger of the [g] pestilence by divine providence, [Lynd. app., p. 56-7. Wilkins, vol. iii. p. 1 §.]

* [Constitutiones Roberti Grossetest Ep. Linc. ap. Fasciculum Rerum expetendarum et fugiendarum, tom. ii. p. 411. ed. London 1690.]

† [Lyndwood, Provinciale, p. 239, gl. *Quorumcunque.*]

‡ [Wilkins has 'quas.']

§ ["*Archiepiscopi Cantuar. mandatum*

not for their own merits, but that they might exercise the ministry committed to them, for the sake of God's people and the public utility, nor ashamed that lay-workmen make their covetousness an example to themselves, have no regard to the cure of souls, which ought by ecclesiastics to be preferred before all other concerns; nay, leaving that, they betake themselves to the celebration of annals [g]and other pecuniary services, and renewing their old affectations of living freely*, demand more excessive salaries for small pains than curates have; so that by means of the multitude of annals, and the unlimited largeness of the stipends for them, many churches, [h]prebends, and chapels of our and your diocese, and of the whole province, will be destitute of priests to serve them; and to the increase of our grief, priests abandoning their cures will betake themselves for lucre's sake to such services. Desiring therefore to restrain the insatiable desire of priests, and to put a stop to the dangers and charges which our farther connivance might occasion, we require and exhort you, our brother†, in the bowels of Jesus Christ, that ye taking the danger of souls and the forementioned causes into your consideration, do before all other things make provision for the cure of every parish church, prebend and chapel, with cure of souls, by the best qualified chaplains, in whatever service they be engaged, except that of a curate; and that ye restrain the disobedient, and their fautors, or those who infringe this our ordinance; and even the [i]canons themselves, and all others whomsoever, celebrating howsoever, or wheresoever within your diocese, by all manner of canonical censures, so as to make them content with a moderate salary. And if any one rebelling against us think fit to remove into our diocese or any other, we will and command that care be taken to have his name and sirname intimated to us, or to that brother of ours into whose diocese he goes, by letters containing the whole process thereupon made. For we will continue the process against such as come into our diocese, according to the beginnings made

*ad compellend. capellanos ad deserviend. ecclesiis curatis, et recipiend. moderata salaria.* Ex reg. Islip. fol. 19. b."]

[g]* [et ad alia peculiaria se conferunt obsequia ut sic antiquas possint insolentias liberius renovare stipendiis competent. et solitis non contenti sed, W.]

† [In Wilkins the letter is addressed to Ralph, bishop of London.]

by you, or any other of our brethren, and execute the sentences passed upon them to our power. And we require and command that the like be done every year by our brethren in their dioceses, in all respects. And that the proportion of the salary may be known to you, we will that the chaplain of a church, chapel, or prebend with cure in your diocese be content with one mark of silver over and above the salary that used to be paid to him that ministered in the same cure. And we will that the salary of any other stipendiary priest be limited to the common taxation in former times*.

[g] This pestilence was so great, A. D. 1348 and 49, that 50,000 are said to have been buried in the Chartreux churchyard only, and it seems the numbers of the clergy were not yet recruited.

[h] By prebends here seem to be meant such churches as had all their tithes and profits impropriated for the maintenance of some ecclesiastical officer in a cathedral or collegiate church, he paying some sorry stipend to a priest for the service of the cure.

[i] This seems to intimate that some canons turned mass-priests or served cures. It was great pity they were not confined to serve the cure of their own prebendal churches, if any such belonged to them.

3. Simon, by divine permission archbishop of Canterbury, primate of all England, legate of the apostolical see, to our venerable brother Simon by the grace of God bishop of London ‡, health, and brotherly charity in the Lord. We learn from Holy Scripture, that vice often appears under the colour of virtue. At the first creation of man God enjoined him to cease from labour on the seventh day only; but the militant Church in the times of grace has added several other days; and some of these again by the toleration of the Church were taken away for the conveniency of men, and the necessity of their labouring; and yet some local festivals were added to be observed by catholics in some parts; and though the custom of festivals was introduced in honour to the saints; yet by the levity of men what was instituted out of [Lynd., p. 101. Sir H. Spelman, p. 609. Lynd. app., p. 57. Wilkins, vol. ii. p. 560†.]

* [After directions respecting the execution of the mandate follows this conclusion:

Dat. apud Maghfeld, 5 calend. Junii, anno Domini 1350, et consecrationis nostræ primo, W. vol. iii. p. 2.]

† ["*Concilium Maghfeldense, in quo Constitutio domini Simonis, Cantuar. Archiepiscopi, de feriis et festis Sanctorum celebrandis edita est* 16 *cal. Augusti, Anno Domini* MCCCXXXII. Ex MS. Cott. Otho, A. 15. collat. cum MS. collegii B. Mariæ Magd. Oxon. n. 185."]

‡ [Roberto, Dei gratia Sarum episcopo, W.]

a reverent regard to the elect of God has been turned to their reproach; by reason that disorderly meetings, and negotiations, and other unlawful exercises are practised on such days, and what was intended for devotion is converted to lewdness, forasmuch as the tavern on these days is more frequented than the church, and there is greater abundance of junkets and drunkenness than of tears and prayers; and men spend their leisure in debauchery and quarrels, more than in devotion; not to omit that covenant servants (without whose labour the commonwealth cannot subsist) under a lawful pretence, do abstain from work on holydays (though of their own making) and on the vigils of saints, and yet take no less on that account for their weekly wages, by which the public good is clogged and obstructed: nor do they sabbatize in honour to God, but to the scandal of Him and holy Church; as if these solemnities were intended for the exercise of profaneness and mischief, which increase in proportion to the number of [these days]. To prevent superstitions, evil inventions, and frauds of covenant servants, and to lessen the occasion of them, and that the memories of the saints which require a cessation from labour may be had in due veneration, according to the original institution of the Church, with the advice of our brethren, we have thought fit to set down in these presents the feasts on which all people in our province of Canterbury must regularly abstain even from such works as are profitable to the commonwealth; reserving a power to ecclesiastical men, and to other great persons, and such as are [in this respect] self-sufficient, of solemnly observing the days of whatever saints they please to the honour of God in their own churches and chapels. [k]In the first place the holy Lord's day, beginning at vespers on the Sabbath-day, not before, lest we should seem professed Jews: and let this be observed in feasts that have their vigils; also the feasts of the Nativity of the Lord, Saints Stephen, John, Innocents, Thomas the Martyr, Circumcision, Epiphany of the Lord, Purification of the blessed Virgin, St. Matthias Apostle, Annunciation of the blessed Virgin, [[l]Preparation], Easter, with the three following days, St. Mark the Evangelist, the Apostles Philip and Jacob, [m]Invention of the Holy Cross, Ascension of the Lord, Pentecost, with the three

following days, Corpus Christi, Nativity of St. John Baptist, Apostles Peter and Paul, Translation of St. Thomas, St. Mary Magdalen, St. James Apostle, Assumption of the blessed Virgin, [n]St. Laurence, St. Bartholomew, Nativity of St. Mary, Exaltation of the Holy Cross, St. Matthew, St. Michael, St. Luke Evangelist, Apostles Simon and Jude, All Saints, St. Andrew, St. Nicolas, Conception of the blessed Virgin, St. Thomas Apostle, the solemnity of the dedication of every parish church, and of the saints to whom every parish church is dedicated, and [o]other feasts enjoined in every diocese by the ordinaries of the places in particular, and of their certain knowledge. We therefore command you that ye notify all and singular the premisses to all our brethren and suffragans, enjoining every one of them that they admonish and effectually persuade the clergy and people subject to them, strictly to observe, and with honour to venerate the feasts above rehearsed, as they fall in their seasons: and let them reverently go to the parish churches on those days, and stay out the conclusion of the masses and other divine offices, praying devoutly and sincerely to God for the salvation of themselves and the rest of the faithful both quick and dead; that by thus [p]going the circle of the solemnities of the saints, they, and other catholics for whom they pray, may deserve the constant intercession of the saints, whose feasts they celebrate, with Almighty God. And let our brethren intimate to their subjects, that on the other feasts of the saints, they may with impunity proceed in their customary labours. And if they find any hired labourers who presume to cease from working on particular feasts that are not above enjoined, in order to defraud those to whose service they have bound themselves, let them canonically restrain them from such superstitions, and cause others to restrain them by ecclesiastical censures. And we command our brethren aforesaid, that every one of them do clearly and distinctly certify us by their letters patent (containing a copy of these presents) what they have done in the premisses, before the feast of the Nativity of St. Mary the Virgin next coming; and do ye also take care effectually to perform all and singular the premisses, so far as they concern your cities and diocese, and in the same manner to certify it to us. Dated at

Maghfield, 17 [q]kal. Aug., A. D. 1362, and of our consecration the thirteenth*.

[k] Because this archbishop makes an appearance of greatly retrenching the number of holydays, I thought fit to compare his list with the two largest, which I think are to be found in Sir H. Spelman; the first is that of Walter Cantelupe, of and for the diocese of Worcester, A. D. 1240. Sir H. Spelman, p. 358†. In this the following festivals are more than in Islep's list. St. Wolstan, a local saint, formerly bishop of this see; St. Paul's Conversion; the Chair of St. Peter; the Deposition, that is, the death of St. Oswald, another bishop of this see; St. Peter *ad vincula;* St. Martin, bishop. But then this list has only two holydays in Easter week, and two in Whitsun-week; and there is no mention of Preparation or Good Friday: but then here are seven holydays mentioned over and above, in which all labour was to cease save that of the plough, viz. St. Vincent, St. John Port Lat., St. Barnabas, St. Leonard, St. Clement, pope, Translation of St. Oswald, St. Catherine. And farther, there were four in which women's work only was forbid, viz. St. Agnes, St. Margaret, St. Lucia, St. Agatha. The other list is that of Peter Quevil, bishop of Exeter, A. D. 1287‡. In this list the feasts over and above those mentioned by Islep are the Conversion of St. Paul, St. Peter's Chair, St. Gregory, St. George, John Port Lat., St. Augustin the English apostle, St. Peter *ad vincula*, Decollation of John Baptist, St. Martin, St. Catherine. Easter and Whitsuntide have here four days assigned for feasts, but perhaps the Sundays might be included. It is observable that the present archbishop had received a bull from Pope Innocent VI. for keeping the feast of St. Augustin of Canterbury, which though long before instituted, was scarce at all observed: and he directs it to be kept as a double feast, by ceasing from such labours as custom forbad on double feasts§: yet it is clear that our archbishop had no such regard to the pope's bull, which he received eight years before he made this constitution, as to make St. Augustin's day an holyday of obligation, or of cessation from labour. And it seems clear that the pope did not understand the customs of England; for feasts here were not observed by cessation from labour on account of their being double, but at the discretion of our archbishops and synods. Archbishop Islep indeed inserted into the list all the principal double feasts, as the Nativity and Epiphany, Ascension, as likewise the Assumption of the Virgin, of the Saint of the Church, and the Dedication of the Church. Easter day and Pentecost day are not enjoined by Archbishop Islep as principal double feasts, but as Lord's days. The greater double feasts which then were are also contained in this list, viz., Purification, Corpus Christi, Nativity of the blessed Virgin, and All Saints; but the feast of the Holy Trinity is compre-

* ["Dat. apud [o]Maghfeld 16 cal. Augusti, Anno Dom. MCCCXXXII. et nostræ consecrationis anno [p] quinto.

[o] Lambeth. 18 cal. Decemb. MCCCLXII. MS. O [p]*Pro* quinto MS. *Cotton legebat, sed male* xiii." W.]

† [Cf. Wilkins, vol. i. p. 677-8.]

‡ [Spelman, vol. ii. p. 372-3; Wilkins, vol. ii. p. 145-6.]

§ [Spelman, vol. ii. p. 599, 620; Wilkins, vol. iii. p. 33, 106.]

hended under the general head of Lord's days, and the same may be said of the feast of the Holy Relics, which was of old kept on the octaves of the Nativity of the blessed Virgin, but had afterwards been removed to the Sunday after the Translation of the new martyr Thomas Becket, (which was July 7;) these were greater double feasts, as also were afterward that of the Visitation, and of the Name of Jesus. But then Archbishop Islep leaves out one of the lesser double feasts, viz., the Transfiguration of our Lord; and many of the inferior double feasts, as Saints Gregory, Ambrose, George, two Augustins, Hierome, and the Translation of St. Edward; and takes in several simple feasts, viz., St. Nicolas, St. Mary Magdalen, and St. Laurence. The monks of Westminster two years before the date of this constitution had exhibited Pope Innocent the Fourth's bull for the solemn observation of King and St. Edward the Confessor to this archbishop, and the archbishop caused this bull to be copied out and sent to all the prelates of his province, and grants an indulgence of forty days to all that would observe it; but he did not think fit to make it an holyday of obligation: nay, this seems to have been but a simple feast: for the Translation of Edward, king and martyr, mentioned among the inferior double feasts, is meant of Edward's son, and successor of King Edgar. This archbishop also received a bull from Innocent the Sixth for the universal celebration of St. Austin's day, which yet he has not here inserted.

[l] Good Friday, but this is only in Sir H. Spelman, p. 610, not 501*.

[m] Lyndwood here takes notice of the reason given in a gloss on *De Consecr. Dist.* 3. *c.* 19, why a feast was instituted in honour to the cross, and not to the ass, which yet bore our Saviour's Body as well as the cross, viz., that on the cross Christ performed our redemption†. But it may be answered that the ass did by its proper action and motion contribute to the carrying of our Saviour to the place where our redemption was to be performed, but the wood of the cross could not by any proper action or motion contribute to this great end.

[n] I know not how it should come to pass that this Roman deacon has had more honour done him than any of the bishops of that see: for his feast was always solemnly observed in this and other Churches, which is more than can be said of his own bishop, Sixtus, or Xystus, who yet died a martyr as well as he: nor did the English ever constantly and universally keep the feast of any the greatest popes, not even of Gregory the Great, by whose means we were converted.

[o] But they must, says Lyndwood, be only such feasts as have been first authorized by the pope: and the case is very plain, our very archbishops in convocation never presume to institute any holyday, but only to choose such as they thought most proper out of the vast number inserted into the Roman calendar.

[p] *Decurrendo*, Oxford; *decorando*, Sir H. Spelman, p. 610; not in the other copy 501‡.

* [S. Parasceues, O. MS. *addit.* gl. *Inventionis sanctæ crucis.*] Wilkins, vol. ii. p. 560.]

† [Lyndwood, Provinciale, p. 102.

‡ [decurrendo, W.]

q Therefore this should in strictness stand before the two preceding constitutions.

[Addenda.] [It was now near two hundred years since Roger, the high-spirited archbishop of York, had assumed an equality with him of Canterbury, and claimed the same privilege of having his cross borne up before him when he was in the province of Canterbury, which the other claimed and used in the province of York. The two present archbishops, Simon Islip and John Thorsby, put an amicable end to this vain dispute, by the mediation of King Edward III., without the interposition of the pope. The sum of the concordat was, that John of York, within two months of the date thereof, (viz., April 20, 1353, or 2,) and his successors, within two months from their first entrance into the province of Canterbury, and having their cross borne up before them, should offer the figure of an archbishop bearing his cross in gold, or some other jewel, of forty pounds value, at Thomas Becket's shrine, by the hands of their official, chancellor, auditor, or some doctor of law, or knight: and that he of Canterbury, for the greater antiquity and eminence of his church, should in the royal presence sit on the king's right hand, and rest his cross on the right side of his throne, he of York on the left side: that in all places large enough, the two archbishops, with their cross-bearers, should go side by side; but in places too narrow for this, Canterbury should have the precedence. In the year 1452, a hundred years after this concordate, William Booth, archbishop of York, did send such an oblation by the hands of a knight. Anglia Sacra, vol. i. p. 74, 75 *.]

* [Cf. ibid., p. 77. not.]

## A.D. MCCCLXIII., or thereabouts.

### ARCHBISHOP THORSBY'S CONSTITUTIONS.

Latin. Sir H. Spelman, vol. ii. p. 602. [Wilkins, vol. iii. p. 68*.]

The constitutions of John Thorsby, archbishop of York.

1. John, by divine permission archbishop of York, primate of England, &c. [a]We do the duty of our office while we make such wholesome ordinances as may promote the honour of the Church, and concern the salvation of souls, and restrain and suppress the excesses and abuses of our subjects. Desiring, therefore, to obviate some errors and abuses so far as we can, which we see to grow rife in the Church; in the first place, (according to the example of Christ, who would have His own Church be called a house, not of merchandise but of prayer; and not allowing fraudulent traffic there to be exercised, cast the buyers and sellers out of the temple,) we firmly forbid any one to keep a market in the churches, the porches and cemeteries thereunto belonging, or other holy places of our [b]diocese on the Lord's day or other festivals, or to presume to traffic or hold any secular pleas therein; and let there be no wrestlings, [c]shootings, or plays, which may be the cause or occasion of sin, dissension, hatred or fighting therein performed: but let every catholic come thither to pray, and to implore pardon for his sins.

[a] He is also said to have been cardinal of St. Sabine, but he does not here express this title.

[b] By this it should seem that these are only diocesan constitutions; yet I chose to insert them, not only because they were drawn by a primate, and so truly great an one as Thorsby was, but because of the provincial constitutions therein cited and inserted. [Especially because I find it a prevailing opinion in this age, that a constitution of the archbishop was [Addenda.]

* ["*Constitutiones Johannis Thoresby, archiepiscopi Eboracensis editæ Anno Dom.* 1367. Ex MS. Cott. Vitellius D. 5. fol. 152 b. et ex MS. penes episc. Assaven." W.]

binding to his suffragans, if it came to their knowledge. Lyndwood, p. 240.]

[c] For *cogitationes*, I read *sagitationes* *.

2. Whereas some being turned to a reprobate sense meet in churches on the vigils of saints, and offend very grievously against God and His saints, whom they pretend to venerate by minding hurtful plays and vanities, and sometimes what is worse; and in the [d]exequies of the dead turn the house of mourning and prayer into the house of laughter and excess, to the great peril of their own souls, who ought there to attend divine offices, or to join in prayer at the exequies of the dead; we strictly forbid any that come to such vigils and exequies, especially in churches, to exercise in any wise such plays and uncleannesses, or any other doings that tend to the bringing men into error or sin; but let every one that comes endeavour humbly and devoutly to do that for which such vigils and exequies were ordained. And we strictly enjoin all and singular rectors, vicars, and all whatsoever that are possessed of ecclesiastical benefices, that they forbid and restrain all such insolences and excesses from being committed in their churches and churchyards, by the sentences of suspension and excommunication according to the canons, under the penalty of twenty shillings, which we will have the said rectors, vicars, and other beneficed men to pay to the fabric of our cathedral church, when, and as often as they do evidently appear to have been guilty of any neglect concerning the execution of this constitution in the premisses, or in any one of them. And let entrance into the church whose honour they attempted to pollute be wholly forbidden them; and let not the way into [e]that same church be open to them for the hearing of divine offices, and receiving the sacraments of the Church, till they make satisfaction.

[d] Exequies were offices for the dead, used either in the church or house of the deceased, while the corpse was above ground †.

[e] Here seems to be a singular censure meant, viz., a prohibition from entrance into one single church only, viz., that where the profanation had been committed: yet in a foregoing clause of this constitution, the transgressors are threatened with suspension [from entrance into church] and excommunication.

* [So Wilkins.]

† [See above, A.D. 1343. 10.]

3. There is no need of promulging new constitutions and laws in cases where sufficient provision is made by those already published. In looking over the synodal statutes promulged in the times of our predecessors, we found among them a reasonable provision made by a constitution, which [f] begins thus: "Also the stipends of priests for one year are to be taxed at five marks; yet our will is that in rich churches a better provision be made, according to their value;" as also by the constitutions of William la Zouche, our immediate predecessor, concerning the salaries of stipendiary priests, chaplains to serve the cure of souls, to be taken from among other ministers. [Therefore] we do farther renew those ordinances and constitutions, strictly charging that they be inviolably observed, and be accounted for the future true synodal constitutions, according to their force, form, and effect: the tenor whereof is thus:

[f] It begins and ends so too; for the whole diocesan constitution of William Greenfield, archbishop of York, on this head, is here transcribed. See Sir H. Spelman, vol. ii. p. 440*.

Here the constitutions of William la Zouche are inserted at large, as I have before translated and inserted them according to the order of time in which they were made, viz., 1347.

4. It is to be known that this statute was afterwards new modified in another provincial council, and so restrained that the excommunication is not incurred, except in certain cases; for instance, they who contract when they know a lawful impediment are excommunicated, though no objection was made at the publication of the banns: also the contractors, who cause matrimony to be solemnized without publication of banns, as likewise the priest who solemnizes it, are excommunicated: also when the contractors cause matrimony to be solemnized, though an impediment were objected at the publication of banns, [they] are excommunicated, if that impediment were not first discussed: also they who compel a chaplain through fear to solemnize a clandestine marriage: [f] also [Sir H. Spelman, vol. ii. p. 607. Wilkins, vol. iii. p. 72.] [Ed.]

* [Cf. Const. Gilberti, ep. Cicestren., A.D. 1289. c. 13, in Wilkins, vol. ii. p. 170.]

the chaplain who solemnizes matrimony without first publishing banns on three solemn days, [if] even afterwards any impediment appear*: and they who contract against the prohibition of the Church in these cases, and no others, are excommunicate *ipso facto*.

5. Whereas we have observed that rectors, vicars, and priests do admit their parishioners to confession without exception, or making any distinctions between greater and lesser crimes, though in some cases an irregularity is incurred; and in other cases though irregularity be not incurred, yet the absolution is specially reserved to the apostolical see; and sometimes we are allowed to absolve: we will (God permitting) make it appear in brief what those greater crimes are, which we reserve to ourselves and our penitentiary; that in cases where the absolution belongs to us we may absolve penitents: and that in other cases we may, as we ought, send men to the apostolical see for the obtaining absolution.

1. The first case is, when a man sins against the faith. 2. When a man sins against nature, and especially with brutes. 3. Is committing murder. 4. When a man sins against God, or by blaspheming publicly any of the saints†. 5. When a man sins against the Church by violently breaking it, or by violating ecclesiastical immunities, or liberties. 6. By committing incest. 7. Or notorious adultery. 8. By bearing false witness, and so committing perjury. 9. By simony. 10. Sorcery. 11. Entering into conspiracy against prelates. 12. By causing conflagrations. 13. By acting contrary to a lawful honest vow. 14. When parents overlay their children. 15. When men corrupt nuns. 16. When violent hands are laid on a clerk, or any religious person; or when one who may does not defend them against such violence; or who detains a clerk that is his adversary, and shuts him up in a prison, or house‡. 17. When one falsifies the letters of a great man, and cherishes or defends such falsi-

* [Item, capellanus, non edens banna per tres dies solennes, et matrimonium solemnizans, vel postea apparet impedimentum. S. W. The meaning of the last four words is, "or after that an impediment is declared."]

† [Quartus est in eo, qui peccat contra Deum, vel aliquem sanctorum, publice blasphemando. W.]

‡ [Johnson *omits*, licet manum non injiciat, W.]

fiers. 18. When one gets and knowingly uses letters so falsified by another. 19. When archdeacons, deans, [g]plebans, provosts, chanters, and other clergymen that have parsonages, 'and priests, study law or physic*, unless within two months' space they wholly desist. 20. When one communicates with an excommunicate in the crime for which he is excommunicated. 21. When one of his own accord and knowingly communicates in divine offices with one excommunicated by our lord the pope. 22. Laying taxes and undue burdens on churches, priests, or their possessions, unless they desist upon admonition. 23. Is the case of public usurers, and such as receive oblations from them, or admit them to ecclesiastical burial. 24. Is the case of him who celebrates or officiates according to his order to one excommunicated with the greater excommunication, or when he himself is suspended or interdicted [h]by man. 25. When a clerk sues in the secular judicature of a prince in contempt of the ecclesiastical judge. 26. When a clerk is guilty of bigamy. 27. When one ministers as a clerk without being ordained. 28. When a clerk takes orders [i]*per saltum*. 29. Or by stealth. 30. Or when one causes himself to be ordained a second time to the same order. 31. Or to be baptized again. 32. When one adheres to heretics to the subversion of the faith, and in contempt of the Church causes himself to be baptized or ordained by them. 33. When one is ordained out of the Ember-days, or otherwise in an unlawful manner, and ministers before he has obtained a dispensation. 34. When one is suspended from divine offices by the canon, and celebrates divine offices while so suspended: in which case the pope reserves the dispensation to himself by the canon, [k]in the second book of the *Liber Sextus, cum æterni*, and in case of the canon which begins *cum medicinalis*, both which belong to the council of Lyons. 35. When one takes orders under a sentence of excommunication. 36. Is when men carry away, consume, or lay hands injuriously on any thing belonging to the houses, manors, granges, or other places of archbishops, bishops, or other ecclesiastical persons contrary to the wills of them or their stewards. 37. The last is, when men commit enormous crimes by which the whole city, town,

'* [necnon presbyteris legem vel physicam audientibus, W.]

vill, or country is in a commotion, and for which public penance is to be enjoined. In these and other crimes which are esteemed of the greater sort, we will that the offender be sent to us or our penitentiary, unless there be peril of death. We charge that letters be given to the penitent without cost, and that it may certainly appear what the penance is and for what crime enjoined, let the penitent carry back letters from the penitentiary to him that sent him: and he is to make no abatement of the penance, nor to convert it into a pecuniary penance, if (perchance) it be corporal, nor let him presume to make any other commutation under pain of suspension from office, which penalty let him that does otherwise incur *ipso facto*, till he deserves our pardon.

[g] Plebans are the same with deans rural, only some say that they were perpetual.

[h] That is, not only by law or canon, but by sentence actually passed against himself in particular.

[i] *Verbi gratiâ*, he that took the order of deacon without being first subdeacon.

[k] I read *de Sententia*, 2 *viz.*, *libro sexti*, *qui incipit Cum æterni*, instead of these words, *qui incipit de seu*, *et* 2 *videlicet libro sexto cum et enim**, and accordingly, *libro secundo Sexti*, *tit.* 14, *de Sententia*, c. 1. You have the constitution of the council of Lyons, A.D. 1245†, which reserves to the pope the absolution of ecclesiastical judges, who have officiated during their suspension from their office. The other you have *libro quinto Sexti*, *tit.* 11, c. 1, which also reserves to the pope the absolution of the ecclesiastical judge, who being suspended for passing sentence otherwise than *e scriptis*, officiated during his suspension: and this is also a constitution of the same council of Lyons‡.

* [So Wilkins; but Johnson's emendation seems to give the true reading.]

† [Constitut. Innoc. P. IV. in Conc. Lugd. Concilia, tom. xxiii. col. 658.]

‡ [Ibid., col. 671.]

## A.D. MCCCLXVII.

### ARCHBISHOP LANGHAM'S CONSTITUTIONS.

LATIN. [Lynd., p. 19.] Sir H. Spelman, vol. ii. p. 133. [Lynd. app., p. 9. Wilkins, vol. i. p. 718*.]

THE constitutions of Simon Langham, who was consecrated archbishop of Canterbury in the year 1366; and after he had been made cardinal, died 1368.

1. We have thought fit by the approbation of this present council to explain the statute of our [a]predecessor Robert, of happy memory, concerning mortuaries, which some have perverted to a wrong sense. Our said predecessor was very diligent in consulting the salvation of souls; because he considered that the laity of both sexes who was subject to him, had grievously offended by unjustly detaining their tithes and oblations, sometimes through ignorance, sometimes through negligence; and he, prudently considering that the sin is not forgiven till what has been taken away be restored, did wholesomely ordain that as a compensation for tithes so withdrawn, the second best animal of the deceased should be paid to the injured church, although he have not inserted the reason into the statute. But now because through occasion of this statute, disputes, which we desire to extinguish, often arise between rectors of churches and their parishioners, we think fit to explain it by a [b]synodal interpretation, viz., that if the deceased had three animals or more of any sort among his chattels, the best being reserved to the lord to whom it is due, the next best be reserved for the church (from which he received the sacraments while he was alive) without any fraud, deceit, or contradiction whatsoever, as a recompence for the withdrawing his tithes, as well personal as predial; as also of his oblations for the delivery of his own soul. But if

* [Wilkins does not ascribe these constitutions either to Archbishop Langton or Langham, but gives the first two among the constitutions of Giles Bridport, bishop of Salisbury, A.D. 1256: for references to passages in Wilkins parallel to the third, see below, p. 440, note *.]

there were but two animals among the chattels of the deceased, the Church in mercy remits all actions on account of a mortuary. But we have thought fit farther to ordain this, that if a [c]wife die while her husband lives, she be not forced to the payment of a mortuary: but if she survives her husband one year, and as his widow continues to govern the family, let her be obliged to a mortuary according to the form above written. But our will is not to create any prejudice by this our constitution, or interpretation to the laudable custom concerning mortuaries, which hath hitherto prevailed in our own [d]province*; but that whether the deceased had or had not the number of three animals, or whether the husband or wife die first, the custom of the Church be observed as to the payment of the mortuary. And we will that all who rebelliously contradict the payment of the mortuary that is due by law or custom, be forced [e]by the ordinaries of the places with ecclesiastical censures.

[a] He means Robert Winchelsey. See his constitution, No. 3. A.D. 1305. Some have ascribed these decrees of Simon Langham to Stephen Langton, and they have his name prefixed to them in the Oxford copy. But it is evident they must have been by an archbishop who succeeded Winchelsey, therefore not by Langton, and Lyndwood expressly attributes this decree to Langham.

[b] Here Lyndwood declares his opinion that this was a diocesan constitution. He owns that synod may signify a provincial convocation: but he did not like the constitution, and therefore disputes its authority†.

[c] Lyndwood will not allow this to be agreeable to right and law; for he supposes that the wife as well as husband may be guilty of subtracting tithes; and then he blames the constitution for allowing so long a time as a whole year for the wife to be excused from paying a mortuary. He says in this respect the mortuary and heriot are put on the same foot, for which there is no reason ‡.

[d] "In our own diocese," say the other copies; and supposing the constitution to have been provincial it was reasonable to make a saving for the particular custom of his own diocese, (which was it seems more favourable to the Church in point of paying mortuaries,) than to make a saving for his own province, or for many places in it, when he was making provision for his own diocese only. But Lyndwood's authority is great, therefore I do not alter his text. And at the words "laudable custom," he says, the Venetians' custom is, that the Church hath a tenth part of the deceased's goods, in Britain the Church hath a third part. Sure the Church never

* [in nostra diœcesi, Wilkins, vol. i. p. 718.]

† [Provinciale, p. 19. gl. *Synodali.*]

‡ [Ibid., p. 21-2. gl. *Minime coerceatur.*]

had a third part and a mortuary too, however not in England. There are, if I remember right, some intimations that the Church of old claimed a third, but this was before mortuaries. And I should rather think that this mortuary was intended as a composition for that third, than a satisfaction for tithes unwillingly subtracted, which is Archbishop Langham's supposition, but of which Archbishop Winchelsey knew nothing.

[e] He would scarce have used this style, if he had intended this constitution for his own diocese only.

2. 'Approving and promoting what was set on foot with [f]a regard to the common health of bodies and souls, that is, the prohibition of scotales and other drinking bouts*; we charge rectors, vicars, and other parish chaplains, firmly enjoining them by the obedience which they owe us, that they by frequent exhortation earnestly persuade their parishioners that they do not rashly violate this prohibition; or else that they denounce such as they find culpable in this respect, suspended from entrance into the church, and from participation of the sacrament, 'till setting aside other penalties, they go to our penitentiary, humbly to receive whatever he shall enjoin as a penance for such transgression[g]. When a multitude of men exceeding ten in number stay long together in the same house for drinking sake, we declare these to be common drinking bouts†. But we mean not to comprehend travellers and strangers, and such as meet (though in taverns) at fairs and markets, under this prohibition. 'Detesting those common drinking bouts, which by a change of name they call charity scotales, we charge that the authors of such drinking bouts, and they who publicly meet at them, be publicly solemnly denounced excommunicate till they have made competent satisfaction for it, and have merited the benefit of absolution‡.

[f] I here follow Sir H. Spelman, who has *pro communi*, not *convivii pro*, as in the Oxford.

[g] The words here omitted are *et prout Deus dederit, imprimatur alias*

'* [Prohibitionem scotallarum et alias communium potationum pro salute animarum et corporum introductam, synodali approbatione prosequentes, Wilkins, vol. i. p. 719.]

'† [donec aliis pœnis cessantibus, ad pœnitentiarium nostrum accesserint, quod ab eo pro transgressione hujusmodi eis pœnitentiæ nomine injunctum fuerit, humiliter recepturi, et prout eis Deus dederit impleturi.

Communes autem potationes declaramus quoties virorum multitudo, quæ numerum denarium excesserunt ejusdem parochiæ, in qua cervisia venalis extiterit, vel etiam vicinarum in tabernia hujusmodi, vel infra septa ejusdem domicilii, potandi gratia commorantur. Ibid.]

'‡ [This last sentence is not in Wilkins.]

*expietur.* Sir H. Spelman—*dederit Deus imprimetur, ac*—both readings are to me unintelligible. Lyndwood meddles not with this constitution.

[Sir H. Spelman, vol. ii. p. 134*.]

3. Let none presume to celebrate mass twice a day, unless on the day of the nativity or resurrection of our Lord, or when one has a corpse to bury, and that in his own church only; and then let not the [h]celebrator drink the washings of his fingers and of the cup. Let the offender know that he is suspended from his office: unless perchance he be compelled by necessity, which we think fit thus to explain and limit, viz. [i]'If espousals are to be made on a festival that has [k]nine lessons, or in the Lent, or in the Ember-days; on the account of the sudden illness of a fellow-priest, or of his manifest absence in the business of the church or upon his own necessary occasions †.

[h] See constitution 6. of Stephen Langton, 1222.

[i] Mass was to be said at the public espousals, and espousals was a distinct office from the solemnization of marriage ‡: the first might be performed in Lent, but not the second.

[k] Feasts with nine lessons were these following, as I have them from a calendar in a printed *portiforium* accordiug to the use of Sarum; Circumcision, Epiphany, Saints Wolfstan, Fabian and Sebastian, Agnes, Vincent, in January. Purification, St. Agatha, the Chair of St. Peter, St. Matthias, in February. Saints David, Chad, Gregory, Edward, Cuthbert, Benedict, the Annunciation, in March. Richard, Ambrose, in April. Saints Philip and Jacob, Dunstan, Augustin archbishop of Canterbury, in May. Translation of St. Edmund, St. Barnabas, Translation of St. Richard, Translation of St. Edward, St. Alban, Apostles Peter and Paul, Commemoration of St. Paul, in June. Translations of St. Martin, and of St. Benedict, and of St. Swithin, and of St. Osmund, Saints Margaret, Mary Magdalen, Anne, in July. The Invention of St. Stephen, Name of Jesus, Saints Laurence, Bartholomew, Augustin of Hippo, Decollation of John Baptist, in August. St. Giles, Translation of St. Cuthbert, St. Editha, St. Maurice, St. Hierom, in September. Saints Remigius, Dionysius, Wulfran, Michael in *monte Tumba*, Translation of St. Etheldred, Saints Frideswide, Crispin, and Translation of John of Beverley, in October. All Saints, All Souls, Saints

* [This constitution, which Spelman took apparently from the same source as the preceding, namely, MS. Cot. Otho. A. 15. fol. 111, is not in Wilkins, but for like passages see Conc. Dunelmense, A.D. 1220, Wilkins, vol. i. p. 579; Conc. Oxon., A.D. 1222, c. 6, 7, ibid., p. 586; Constitutiones synodales Sodorenses, A.D. 1291, c. 36, ibid., vol. ii. p. 179. See also above, p. 105-6, and Lyndwood, Provinciale, p. 226-8.]

† [Spelman's reading is,—

Si in Festis *ix Lectionum*, vel in *Quadragesima* vel in *quatuor temporibus*, vel sponsalia fieri oporteat, vel subveniendo socio infirmo, vel pro Ecclesiæ suæ negotio, vel propria necessitate manifeste absente. Spelm., vol. ii. p. 134.

Respecting the permission of a second mass, compare the parallel constitution of Abp. Langton, above, A.D. 1222, 6, 7, p. 105-6; Lyndwood, Provinciale, p. 227, gl. *Diem Natalis Domini.—Resurrectionis Dominicæ.*—etc.]

‡ [See in vol. i. A.D. 946.]

Winefred, Leonard, Martin, Machute, Edmund archbishop, Hugh, Edmund the king, Cecilia, Clement pope, Catharine, Andrew, in November. Deposition of St. Osmund, Nicholas, Conception of the Blessed Virgin Mary, Saints Lucy, Thomas, Sylvester, in December *.

Here follows in the Oxford copy a constitution bearing the name of Stephen Langton; it contains in it nothing singular, but only the cases reserved to the archbishop's own absolution. It can scarce be genuine, and having nothing in it but what may be seen in other constitutions, I think not fit to translate it.

But I must take notice to my reader of some miserable rhymes in Latin to the honour of St. Catharine, which this archbishop confirmed by a formal rescript, (extant in Sir H. Spelman, p. 617, and transcribed from the principal registry of the see of Canterbury†,) that is, he declared them to be catholic, and gave leave to such as would to rehearse them on St. Catharine's day, and for this purpose to write them down in their books. He seems greatly pleased with them himself, and would probably have enjoined the use of them if he had thought that in his power; but he styles them hymns, which answered to our anthems, and in relation to which all churches were at liberty to use which they pleased; nay, Durandus says that though all were obliged to sing psalms and canticles, yet they were left to their own discretion whether they would use any hymns or not ‡.

A.D. 1376 Archbishop Wittlesey § published Pope Gregory XI.'s bull for keeping St. Augustin's day as a double feast. [Sir H. Spelman, vol. ii. p. 620. Wilkins, vol. iii. p. 106¶.]

* [In the above imperfect list Johnson omits the following feasts expressly marked as having nine lessons in the calendar to which he refers:

Conversion of St. Paul in January; Octave of SS. Peter and Paul in July; Ad vincula Sancti Petri (ed. 1556) and Octave of the Assumption of the Blessed Virgin in August; Exaltation of the Cross in September. See Calendar at the beginning of Portiforium seu Breviarium ad usum ecclesiæ Sarisburiensis. Lond. 1555. For further correction of Johnson's note, compare Radulphi decani Tungrensis, (A.D. 1403.) Prop. xvii. ap. Hittorpium, p. 657; Calend. in Miss. Sarisb. fol. Paris, A.D. 1555.]

† [Wilkins, vol. iii. p. 77.]

‡ [In quibusdam ecclesiis hymnos non cantant: quod tamen approbandum non est, quoniam non sine causa sunt a sanctis Patribus instituti. Durandi Rationale, lib. v. c. ii. n. 23.]

§ [Rather his successor Simon Sudbury; Archbishop Wittlesey died A.D. 1374. See Godwin, de præsulibus Angliæ, p. 117. For the previous publication of a like bull, see above, p. 428, notes k and §.]

¶ ["A.D. 1376. Simon Sudbury archiep. Cant. 2. *Mandatum archiepiscopi Cantuar. de tenendo festum sancti Augustini sub duplici festo.* Ex Reg. Sudbury, fol. 18. b."]

## A.D. MCCCLXXVIII.

### ARCHBISHOP SUDBURY'S CONSTITUTIONS.

LATIN. [Lynd., p. 240.] Sir H. Spelman, vol. ii. p. 626. [Lynd. app., p. 58. Wilkins, vol. iii. p. 135*.]

THE provincial constitutions of the venerable father, the lord Simon Sudbury, archbishop of Canterbury, made at Lambeth, A.D. 1378, in the second year of King Richard II., in the first year of Urban V., pope, and Clement VII. antipope; at which time the twenty-seventh most grievous schism arose, which continued thirty years. This most eloquent man, who was wise incomparably beyond the rest of the kingdom, sat about six years, and at last was beheaded at London by command of the rebels Tyler and Straw, A.D. 1381 †.

Simon, by divine permission archbishop of Canterbury, primate of all England, legate of the apostolical see, to our venerable brother the lord William, by the grace of God bishop of London, health and brotherly love in the Lord. The unbridled covetousness, *&c., as in the first constitution of Islep,* 1632, *to* the evil example of laymen. And though the lord Simon Islep of good memory, formerly archbishop of Canterbury our predecessor, in his life-time did appoint and ordain, with the advice and consent of his brethren, that such chaplains as celebrate annals, and others who do not attend the cure of souls, should be content with five marks; but such as officiate in churches and parochial chapels, who have cure of souls belonging to them, with six marks for their annual stipends; and laid upon priests that disobeyed this statute the punishment of suspension *ipso facto:* yet we, taking into our consideration the condition of the times, with the advice and consent of our brethren as-

* ["*Statutum super salariis presbyterorum factum per Simonem Sudbury, Cantuar. Archiep. 6. cal. Dec. anno Domini* MCCCLXXVIII. Ex reg. Sudbury, fol. 51. A."]

† [This preface is translated from the appendix in the Oxford edition of Lyndwood, 1679, and is not in Spelman or Wilkins.]

sembled together for this purpose on the [a]sixth day of November, in the year of our Lord underwritten, in a certain chamber within the verge of the monastery of Peter and Paul at Gloucester, in the diocese of Worcester, do ordain and enact, according to the form underwritten, concerning the salaries hereafter to be received by parish priests, and for annals within our said city, diocese and province of Canterbury.

[a] Sixteenth, Sir H. Spelman *.

1. In the name of God. Amen. We, Simon, &c., with the advice of our brethren and suffragans, do enact that whoever are to celebrate annals within our city, diocese, and province of Canterbury for the souls of deceased persons, be content with seven marks, or with diet and three marks; and others who are to serve the cure of souls, with eight marks, or diet and four marks, so as to receive no more upon compact in any wise; unless the bishop of the place do first decree that such as serve the cure of souls be otherwise dealt with. If any clergyman presume to act contrary to this our constitution by either giving or receiving, let him incur the sentence of excommunication *ipso facto;* from which he may not be absolved by any but the diocesan of the place where he offended. And we will that they who act contrary to this statute be bound and involved in the [b]sentences therein contained so soon as the same hath been published, as the canon requires. We therefore commit it to you brother, and command you and firmly enjoin you that ye transmit all and singular the premisses to be published in your city and diocese with all speed, and to be forthwith put in execution: and do certify us by your letters, before the feast of Easter next coming, of the day of your receiving these presents, and of your executing of them, and of the manner and form thereof, and what ye have done in the premisses: and enjoin our said suffragans that they do every one of them by their letters (containing a copy of these presents) certify us concerning what they have done in this respect before the feast aforesaid. Dated

* [So Wilkins.]

at Lambeth (as to the signing of these presents) 6 kal. December, A.D. 1378, of our consecration the fourth*.

[b] I read *sententiis contentis*, not ——— *as*†.

[Lynd., p. 343.] 2. Let it often [and at large] be inculcated on laymen at confessions, and in sermons, especially in the great solemnities, that all mixture of man and woman is mortal sin, unless it be excused by matrimony. And if a priest be found negligent in denouncing this wholesome doctrine, [c]let him be punished according to the canons as one that is a fornicator, or that allows of fornication.

[c] This is indeed the doctrine of the canon law, as Lyndwood observes, *dist.* viii. *c.* 3, 4, 5‡.

[p. 342.] 3. Let the confessions of a woman be made without the [d]veil, and in an open place, so that she may be seen, though not heard [by the people]: and let laymen be admonished to confess at the very beginning of Lent, and always presently after a fall, lest one sin by its natural tendency draw the man to another. [e]And let no priest enjoin masses as the whole, or part of a penance: yet he may advise them.

[d] Lent was the common time of confession; and during this season a veil was hung before the chancel, which deprived the people of the sight of what was done there §.

[e] Fasting, prayers, and alms, were the most usual penances, but it had long been the practice of some priests to enjoin the penitent for some sins to pay for saying such a number of masses; but this gave scandal: for it was supposed that the priest did this with a design that he himself or his brother priest might get the money paid on this account. Lyndwood says that it was proper to enjoin this penance to priests¶ in some cases.

[p. 343.] 4. Let confessions be heard thrice in the year, and let

* [Here the extract from the register of Sudbury both in Spelman and Wilkins ends; but the following constitutions are attributed to Abp. Sudbury, both in the text of Lyndwood and the appendix to the Oxford edition, p. 58.]

† [Sententias vero in dicto statuto nostro contentas, post publicationem ejusdem juxta canonum exigentiam, contrafacientes eidem, ligare volumus et involvi. W. Johnson's emendation seems necessary.]

‡ [This is a wrong reference to Corp. Jur. Can., and should probably be corrected as below in the gloss of Lyndwood, to which Johnson refers:

*Mortale peccatum.* Et sic fornicatio simplex, quæ est soluti cum soluta, est mortale peccatum. 32. *q.* 4. *nemo. cum glo. et c. meretrices. per Jo.* Provinciale, p. 343.]

§ [See in vol. i. A.D. 877. 17, p. 326, notes † and ‡.]

¶ [Johnson omits the reason, 'quia in hoc casu nulla potest esse suspicio mali.' Lyndwood, Provinciale, p. 343. gl. *Missas.*]

men be admonished to communicate as often, viz., at Easter, Pentecost, and Christmas. Yet let them first prepare themselves for it by observing some [f]abstinence, according as the priest shall advise. But whoever does not confess to his [g]proper priest once in the year at least, and receive the sacrament of the eucharist at Easter, ([h]unless he think he ought to abstain by the advice of the priest,) let him be forbidden entrance into the church while he is alive, and be deprived of Christian burial when dead. And let them be often told of this.

[f] Some take this advice, says Lyndwood, and fast all the Advent to receive at Christmas; all, or part of Lent, to receive at Easter; from Rogation-Monday to Pentecost, to receive at Pentecost*. This shews that our forefathers were no strict observers of Lent.

[g] Proper priest, that is, the parish priest, or the friar well authorized. Lyndwood.

[h] Lyndwood mentions the cases in which men should be advised not to receive, viz., 1. If they are not disposed to leave their sins. 2. If their sins are such that none but a superior can give absolution; for they were excused from receiving till they had taken this journey. 3. Infidelity, indevotion, infirmity of the body, (so great as made men uncapable of receiving of it,) distraction, possession by evil spirits. Farther, he that was under notorious sin was to be repelled if he did offer himself to receive; but not if it were private, though the priest himself knew it by confession or otherwise. If the offender gave the priest private notice of his intention to receive, the priest was to warn him against it; but if the offender notwithstanding, thrust himself in among the communicants, he could not be repelled because of the scandal. See Lyndwood, p. 344†.

* [Provinciale, p. 343, gl. *Consilio sacerdotis.*] † [gl. *Abstinendum.*]

## A.D. MCCCXCI.

### PREFACE. ARCHBISHOP COURTNEY'S CONSTITUTIONS AGAINST CHOPPE-CHURCHES.

William Courtney was a very active archbishop, and he employed his care and zeal chiefly against the Lollards or Wicklifists: yet he found time to reinforce, by the authority of a convocation, the fifth constitution of Robert Winchelsey concerning stipendiary priests. We have his letter to the bishop of London, by which he requires him to put it in execution himself, and to send it to the other bishops of the province to do the like; the form differs very little from that used by his predecessors on the like occasions, save that he gives commission to all and singular his brethren to act as his deputies with the power of canonical coercion in executing of this constitution; and this had sometimes been done by former archbishops; that as the popes had made the archbishops seem to act with authority derived from Rome; so every suffragan bishop might be thought to derive his power from Canterbury. This letter bears date from Croydon, 1391, but the constitution was renewed in a convocation holden at London*. This archbishop did likewise make some regulations for the court of Arches†; and enjoined the feast of Anne, the supposed mother of the Virgin Mary, to be observed throughout the province, as he was enjoined by a bull of Pope Urban the Sixth‡. See Oxford copy, p. 60; Sir H. Spelman, p. 636. He received another bull from the same pope for observing the vigil of the Nativity of the Virgin, but the publication of it is in neither of these books§. The first date 1383, the other is without date.

* [As stated in the said letter, Wilkins, vol. iii. p. 213-14.]

† [Ibid., p. 154,-212, 217.]

‡ [Ibid., p. 178.]

§ [The bull for observing the vigil of the Nativity of the Blessed Virgin Mary was received and published by Archbishop Sudbury, A.D. 1380, and is printed in Wilkins, vol. iii. p. 145-6.]

## A.D. MCCCXCI.

### ARCHBISHOP COURTNEY'S CONSTITUTION AGAINST CHOPPE-CHAPELS.

Sir H. Spelman, vol. ii. p. 641. [Wilkins, vol. iii. p. 215*.]

THE same year Archbishop Courtney enjoined the bishop of London to publish in the usual form his mandate against some vile clergymen, commonly called choppe-churches. There was, I suppose, no occasion to make any new constitution in convocation against these offenders, for there were canons and laws enough already in force against them: therefore he sends his mandatory letter for putting the bishops in mind of their duty, and requiring them to execute their powers against these foul practices: and here following we have Robert Braybrook, bishop of London's certificatory in answer to the archbishop, containing a copy of his mandate.

To the most reverend father and lord in Christ, the lord William, by the grace of God archbishop of Canterbury, primate of all England, legate of the apostolical see, Robert, by divine permission bishop of London, obedience and reverence, with the honour due to so great a father. We received your most reverend mandate according to the tenor underwritten.

"William, by divine permission archbishop of Canterbury, primate of all England, legate of the apostolical see, to our venerable brother Robert, by the grace of God bishop of London, health and brotherly charity in the Lord. We are bitterly grieved when any of the flock under our trust provokes the Most High by his villanies, and strikes himself with a damnable sentence, and rashly throws himself into destruction. But human laws and canonical statutes do among other things abhor covetousness, which is idolatry,

* ["*Archiepiscopi Cant. litera missa omnibus episcopis suffraganeis contra Choppe-churches.* Ex reg. Morton, fol. 225. b."]

and damned simoniacal ambition. But (alas!) some men's minds now-a-days are so darkened and smitten with outward things, as never to look inward to themselves, or to Him that is invisible, while they are puffed up with temporal honours, still desiring more, slighting the ways of God. Some traffic for the gifts of the Holy Spirit, while they pay or make private simoniacal contracts for churches and ecclesiastical benefices, forgetting the words of Peter to Simon, "Thy money perish with thee, because," &c. Others of these tare-sowers, perverters of right, inventors of mischief, commonly called choppe-churches, defraud some by an unequal change of benefices through their wicked intriguing and execrable thirst of gain; and sometimes wholly deprive others of the benefices they have through false colours; insomuch, that being reduced from an opulent to a poor condition, and not being able to dig, they die of grief, or else are compelled to beg through extreme poverty, to the scandal of the Church and clergy. Others, though "they who serve at the altar should live by the altar," &c., according to the Apostle, procure persons to be presented to churches with cure and ecclesiastical benefices by importunity and money, and to be instituted therein, after having first wickedly sworn that so long as they have those benefices they will claim no profits from them, nor any way dispose of them, but leave them to their direction and profit [who procured them], under pretence of an exchange, or purely [a]at their request. By which means (whereas one church ought to belong to one priest, and no one ought to have several dignities or parish-churches) one man, insufficient for one cure though a small one, sweeps to himself by a trick the profits of many benefices, which if if equally distributed would abundantly suffice for many learned and very reputable men who very much want it; divine worship and hospitality is neglected; the indevotion of the people toward the Church and them who belong to it is increased, and the cure of souls is not minded. Such carnal men despise spiritual precepts, and affect temporal riches in contempt of eternal rewards. But it were to be wished, that for their own amendment they would be afraid of punishment, by considering how the Redeemer of mankind cast the chapmen out of the temple, saying, "Make not

[Acts viii. 20.]

[1 Cor. ix. 13.]

[John ii. 16.]

My Father's house a house of merchandise." Our Lord never dealt so severely with any offenders, to demonstrate that other sinners ought to be reprehended, but these to be driven far from the church. 'Farther, some raptors rather than rectors of churches, shepherds who know not and take no care of their flocks, provoke the divine indignation, neglecting hospitality without cause, shamefully spend their time at London, devouring Christ's patrimony, living daintily on the bread of the hungry, clothing themselves with the garments of the naked, and with the ransom of captives: they dare not say with the prophet, "The Lord is the portion of [Ps. xvi. 5.] mine inheritance:" but rather, "We desire not the knowledge [Job xxi. of Thy ways*." Whereas, therefore, the cure of souls is our 14.] chief concern, of which we are to give a strict account, and resolving not any longer to connive at so great a scandal of the clergy of the Church of England, and so perilous and pernicious an example, at the importunate request of many we give it in charge, and command you my brother in virtue of obedience, and do will and command that the rest of my suffragans and fellow bishops of our province of Canterbury, be enjoined by you to take corporal oaths of all whatsoever that are to be presented to ecclesiastical benefices, now or hereafter to be void within your dioceses, that they have not given or promised † directly or indirectly, by themselves, or by any employed by them for the presentation, to the presentor or any other persons whatsoever; and that neither they nor their friends are obliged by oath or any pecuniary security, to resign or make exchange of the benefices; and that no unlawful compact hath been made in this respect, nor promise, with their will or knowledge: and that in case of ex-

* [Nonnulli præterea, quod dolendum est, ecclesiarum non rectores, sed raptores, non boni pastores gregem suum cognoscentes, sed velut mercenarii, ad quos non pertinet de ovibus; qui sicut verisimiliter est timendum, Dei omnipotentis indignationem et iram in die iræ et furoris Domini cumulantes, cura sua et debita hospitalitate neglectis, in cleri opprobrium, ut de aliis eorum insolentiis taceamus, absque causa necessitatis et rationabili, impudenter Londoni commorantur, patrimonium Jesu Christi devorantes, ac bona pauperum, esurientium panem, nudorum vestimenta, redemptionem miserorum, ad eorum interitum, miserabilibus usibus consumentes; qui sunt istis injustiores aut tam avari, qui ducatum aliis præbere tenentur, et eos bene vivendo per exempla rectæ operationis præire, multorum alimenta, non suum usum, sed abundantiam et delicias faciunt, nec loqui audeant cum verbis prophetæ "Dominus pars hæreditas meæ;" sed potius "Scientiam viarum nolumus." W.]

† [Johnson *omits*, aliquid, S. W.]

change no proxies, though signed by notaries, be allowed, without the presence of the principals, and a provident examination of the equality as to the value of the benefices, and an oath given by each party that no fraud private or public is used in the exchange: 'and that the non-residents in your dioceses be effectually called home to do their duty; and the simoniacal possessors, or rather usurpers of churches be severely censured; and that the accursed partakers with Gehazi and Simon, the "choppe-churches," who chiefly are at London, be in general admonished to desist from such procurings, changings and trickings made in their conventicles and simoniacal assemblies for the future*: and let them cassate and cancel all contracts and bargains fraudulently made, though confirmed with oaths, which in this case are null; and let all such frauds and simoniacal contracts, which are not in their power to break, be discovered to the bishop of the dioceses in which such benefices as are concerned in the transaction do lie, that they by whose procurement or consent these contracts were made, may be enjoined penance according to their merits, under pain of the greater excommunication after fifteen days' notice, (five days being allowed after each of the three usual admonitions,) which we pass upon them by this writing [b]from this time forward, as well as from that time forward. 'And do ye strictly enjoin and cause other bishops to be so enjoined, that these wicked merchants of the Lord's inheritance, and such as have several dignities, churches and "choppe-churches," be struck with the sword of ecclesiastical censure, especially such of them as are in orders, as being universally abhorred

'* [Non residentes insuper in vestra et eorum diœcesibus, nisi subsit evidens, utilis, et rationabilis causa ad residentiam personalem, et officium, propter quod datur beneficium impendendum revocetis et revocent cum effectu, ne ipsorum sanguis de vestris aut eorum (quod absit) manibus requiratur; quosque in beneficiis ecclesiasticis simoniace, vel fraude prædicta intitulatos, quin verius intrusos inveneritis, debitæ animadversionis stimulo percellatis et percellant, cum ubi tales intrusores ad locum regiminis adducantur, quorum radix gravi peste infecta est, major locis illis metuenda est calamitas, quam placatio Dei, cujus iracundiam exinde contra eos temere provocarunt: necnon prædictos iniquitatis alumnos, clerum et ecclesiam blasphemantes maledictos Giezei et Simonis consortes in crimine "Choppechurches" vulgariter appellatos, in civitate vestra Londonensi pro majori parte degentes, ut dicitur, publice et in genere moneri faciatis, quod ab eorum morbosa contagione, et damnosa procuratione permutationum et deceptionum hujusmodi, per ipsorum conventicula et seditiones Simoniacas de cætero fiend. desistant et desistat eorum quilibet cum effectu, W.]

by all*, lest by the neglect of you and other bishops this clamour be again repeated in our ears. And do ye cause us to be certified of what you have done in the premisses before the feast of St. Michael the archangel next ensuing, by your letters patent containing a copy of these presents. Dated in our manor of Slyndon, on the fifth day of March, in the year of our Lord 1391, and of our translation the eleventh†."

[a] I read *requisitæ* ‡.

[b] *Ex nunc prout ex tunc.* This shews the nature of conditional excommunication, as still used in ecclesiastical courts, viz., that it takes effect from the time of its being decreed in court, in case the conditions be not submitted to within the time limited. I mean it takes effect in the design of the canon and the ecclesiastical judge, though not as to the temporal court: and so the *ipso facto* excommunication takes effect as to the intention of the canon, from the moment that the fact is committed; though it can have no effect as to the temporal court, till it have been particularly denounced against the party. The man who committed the fact and knew the canon was excommunicated in his own conscience from that moment forward: and this was a point of great moment, while excommunication was deemed a real curse.

By authority of which reverend mandate we have enjoined it by our letters, as the custom is, to be fully executed as to all and singular its contents, by all and singular your suffragans of your province of Canterbury in their cities and dioceses, according to the full power, form, and effect of the said mandate, and have caused the said mandate, and all and singular the premisses, so far as we are concerned, to be put in due execution §, and will cause it so to be done to the best

* [Vobis districtius injungentes, et per vos præfatis coepiscopis et confratribus simili modo injungi mandantes, quatenus prædictos hæreditatis Domini pessimos mercatores, plures ecclesias et dignitates sic fraudulenter, ut præfertur, in vestra et eorum diœcesibus obtinentes, ac eosdem perversitatis alumnos "Choppechurches" communiter dictos, et maxime in sacris ordinibus constitutos, quorum abusiones et nefas damnat clerus, abominatur populus, et utriusque sexus consortium detestatur, ecclesiasticæ animadversionis mucrone feriatis, et feriant, ut metus pœnæ meta ipsorum avaritiæ et præsumptionis existat, et alios præsumptores ab illicitis coerceat per exemplum; W. Johnson otherwise abridges the original of Archbishop Courtney's letter, but without materially detracting from the sense.]

† [The remainder is in Spelman but not in Wilkins.]

‡ [So Wilkins.]

§ [Johnson *omits*, infra nostras civitatem et diocesin, Spelman.]

of our power, God permitting. And thus we have duly executed your most reverend mandate, according to the demand and effect thereof in and through all particulars. Dated in our manor of Hadham on the seventh day of September in the year of our Lord above-written, and of our consecration the eleventh.

## A.D. MCCCXCVIII.

### PREFACE. ARCHBISHOP ARUNDEL'S CONSTITUTION IN HONOUR TO BECKET.

Thomas Arundel, archbishop of Canterbury, having incurred the displeasure of King Richard the Second, was forced into banishment for being accomplice with his brother the earl of Arundel, who suffered death as partisan with the earl of Derby (afterwards King Henry the Fourth). Roger Walden is put into the chair of Canterbury, and acted as archbishop for two years or thereabouts. I insert the following constitution not out of regard to the man who presided in convocation at the making of it, but as a demonstration of the most excessive bigotry of our ruling clergy at this time toward Thomas Becket. Walden, though he was ambitious of the archiepiscopal dignity, yet seems to have been a modest man in this respect, that he does not assume to himself the style of an archbishop, or primate, for thus the constitution runs.

## A.D. MCCCXCVIII.

### ARCHBISHOP ARUNDEL'S* CONSTITUTION.

LATIN. Oxford copy, p. 62. [Wilkins, vol. iii. p. 234†.]

‡THE splendor of the paternal glory, who illuminates the world with ineffable brightness, does then favour the pious desires of them that hope in His most clement majesty, when their humble devotion is assisted by the merits and prayers of the saints. We desiring to render Christ's faithful people, especially such as dwell in our province of Canterbury, more acceptable to God, and followers of good works, 'do enact and ordain in the convocation of the clergy of the province of Canterbury on the second day of March, A. D. 1398, celebrated in our cathedral church of St. Paul, London, with the consent of ourself, our brethren, and suffragans§, and of the clergy aforesaid, that the festivals underwritten, that is, of St. David, bishop and confessor, whose body and relics are at Menevia, on the kalends of March; and St. Chad¶, whose body and relics are in the church of Lichfield; [a]St. Wenefred, virgin and martyr||, whose body and relics are reposited

* [In the addenda to the first edition Johnson gives under the year 1398 this direction, "In the title, the reader may, if he please, substitute Walter for Arundel;" of course he means Walden, who in the passage quoted below from Wilkins plainly styles himself archbishop of Canterbury.]

† ["*Literæ archiep. Cantuar. pro celebratione festorum S. David, Ceddæ, Wenefridæ et Sancti Thomæ Martyris.* Ex reg. Exon. Stafford A. fol. 16. et ex MS. Bodlei. super. D. 1. Art. 43."]

‡ [Wilkins begins the constitution with the following passage, omitted Lynd. app., p. 62:

Robertus, permissione divina Londonensis episcopus, dilecto in Christo filio archidiacono nostro London. salutem, gratiam et benedictionem. Literas reverendissimi in Christo patris et domini dom. Rogeri Dei gratia Cantuar. Archiepiscopi, totius Angliæ primatis, et apostolicæ sedis legati, nuper recepimus, tenorem qui sequitur verborum continentes; Rogerus, permissione divina Cant. archiepiscopus, totius Angliæ primas, et apostolicæ sedis legatus, vener. patri nostro domino Roberto, Dei gratia London. episcopo, salutem, et fraternam in Domino charitatem. Splendor, &c. Compare Archbishop Chichley's constitution, below, A.D. 1415, 1.]

'§ [in ultima convocatione cleri provinciæ nostræ Cant. secundo die mensis Martii, in ecclesia vestra cathedr. S. P. London. celebrata, de consensu vestro, aliorumque confratrum et suffraganeorum nostrorum, W.]

¶ [Johnson *omits*, episcopi et confessoris, 6 non. Martii, W.]

|| [Wilkins *omits*, and martyr.]

in the conventual church of St. Thomas the martyr, without the walls of the town of Shrewsbury in the diocese of Coventry and Lichfield, and our province of Canterbury, on the third day before the nones of November, 'be devoutly celebrated in all times coming every year, and on the days before mentioned, by the clergy of our province in all their churches, with nine [b]lessons, and all other things particularly belonging to the office of the saints of whom we have spoken; with the common [office] in places where the proper service for these saints is not to be had; and that the feasts of these saints on the days above specified, be marked and distinguished in some kalendar of every church of our province*.

[a] Here should be added, on the second of March. But either this constitution was very ill drawn, or this is a very imperfect copy.

[b] By what here follows it is evident that when a holyday was enjoined to be kept by a convocation or archbishop over the whole province, or by a bishop in his diocese, it does not therefore follow that the convocation or archbishop drew an office for the day, and enjoined the using of it. The court of Rome, which had the sole power of canonizing saints and appointing their festivals, either drew an office proper for the day, which was by degrees dispersed into all churches and inserted into their books, or else they left the festival to be kept at large by some common office. And whoever looks into their books will find such common offices for saints of all ranks and denominations, as in the cases here mentioned they have *Commune unius pontificis, Commune unius pontificis et martyris, &c., Commune unius virginis, Commune plurimarum virginum.* The constitution speaks of proper offices for the saints here mentioned, but supposes that all churches were not furnished with them; and till they were, leaves them to be celebrated in those churches according to the common forms.

But although we ought to extol all and singular that are settled in the kingdom of heaven with sonorous praises, and to honour them with a solicitous zeal, yet it is fit that with our loudest voices, and peculiar praises, and spiritual honours we should extol, sound forth, and venerate the most glorious

'* [per universas ecclesias nostræ Cant. provinciæ, quamlibet viz. dictarum festivitatum, cum 9 lectionibus, et cæteris omnibus ad officium sanctorum, de quibus præmittitur, singulariter pertinentibus, de communi in locis, ubi proprium servitium de sanctis hujusmodi non habetur, ordinavimus et statuimus, annis singulis, perpetuis futuris temporibus, a clero dictæ nostræ provinciæ devotius celebrari, diebusque prænotatis, ut præfertur, debito devotionis obsequio dicend. de eisdem, ac festa sanctorum hujusmodi, sub diebus et mensibus prænotatis, in aliquo cujuslibet ecclesiæ dictæ nostræ Cant. provinciæ calendario intitulari pariter et signari. W.]

bishop and martyr St. Thomas, the patron of us, and of the church which is the head and mistress of all the churches of the said province, who is known to have shed his blood for the ecclesiastical liberty, and by whose merits and passion our whole province of Canterbury is made to shine, and the Church universal is decorated. Upon this consideration, we in the convocation aforesaid, 'with the concurrent advice and consent of ourself, and the others before-mentioned*, do ordain and enact that a [c]commemoration of the aforesaid most glorious martyr St. Thomas, be laudably observed every where in our province of Canterbury once in every week, that is, on [d]Tuesday, if it may conveniently be done, otherwise on some day of the week, if it fit better, 'in the same order with the [c]commemoration of the feast of the place†, to the honour and glory of the Church and the said martyr‡.

[c] A commemoration or memory is a collection of some antiphons, prayers, &c., to be inserted into the office of the day in honour to some saint of lesser rank, or whose day falls on a greater festival or a solemn fast; or in honour to some saint of great magnitude, on such days as are not peculiarly set apart in honour to him.

[d] In the office on the translation-day of this reputed saint, it is said that he was born, banished, had a revelation from Christ, returned from banishment, was killed, and had his translation (that is, the removal of his corpse from the grave to the shrine) performed all on a Tuesday.

[e] The feast of the place, that is, the day on which the church of each place was founded, is always to be kept as a principal double; that is, as a feast of the very highest rank, and the commemoration was proportionable to the feast.

'* [vestro et aliorum, de quibus præfertur, concurrente consilio pariter et assensu, W.]

'† [sub regula commemorationis festi loci, W.]

‡ [The letter of Roger Walden in Wilkins, vol. iii. p. 235-6, containing farther a sentence relating to the execution of the foregoing constitution, and a long paragraph ordering a collection on behalf of Abbot Nicolas, as resolved in the same convocation, is dated, "In manerio nostro de Croydon, 8 die dicti mensis Martii, A.D. MCCCXCVII. et nostræ consecrationis anno primo:"

After this follows a postscript to the whole by Robert (Braybrook, consecrated bishop of London A.D. 1381,) dated, "In manerio nostro de Stebbenhythe die 15 mensis Aprilis, A.D. MCCCXCVIII. et nostræ consecrationis anno XVII."]

## A.D. MCCCCVIII.

### ARCHBISHOP ARUNDEL'S CONSTITUTIONS AGAINST LOLLARDS.

LATIN. [Lynd., p. 288.] Sir H. Spelman, vol. ii. p. 662. [Lynd. app., p. 64. Wilkins, vol. iii. p. 314*.]

THE constitution of Lord Thomas Arundel, archbishop of Canterbury, published in a convocation of the whole clergy of his province celebrated at Oxford, A. D. 1408; Henry the Fourth reigning in England, Gregory the Twelfth, Alexander the Fifth, and Benedict the Thirteenth exercising the papal jurisdiction all at once.

Thomas, by divine permission archbishop of Canterbury, primate of all England, and legate of the apostolical see, to all and singular our venerable fellow-bishops, brethren and suffragans, abbots and priors, deans of cathedral churches, archdeacons, provosts and canons, rectors, vicars and chaplains of parish churches, and all clerks and laics whatsoever within our province of Canterbury, health, and firm adherence to the doctrine of holy mother Church. He does an injury to the most reverend synod who examines its determinations: and since he who disputes the supreme earthly judgment is liable to the punishment of sacrilege, as the authority of civil law teaches us; much more grievously are they to be punished, and to be cut off as putrid members from the Church militant, who, leaning to their own wisdom, violate, oppose, and despise, by various doctrines, words, and deeds, the laws and canons made by the key-keeper of eternal life and death, (the vicegerent not of an earthly man, but of the true God, and to whom God Himself has given the rights of a celestial empire,) when they have been published according to form and canon, and observed by the holy fathers our predecessors, even to the glorious effusion of their blood, and [a]dissipating of their brains. 'For they ought to consider that in the Old Testament Moses *and* Aaron *were* [the first] *amongst the*

* ["*Constitutiones domini Thomæ Arundel, Cantuariensis archiepiscopi, factæ in Convocatione prælatorum et cleri Cantuariensis provinciæ, in ecclesia cathedrali S. Pauli London. incepta* 14 *die mensis Januarii, A.D.* 1408, *et translationis suæ an. xiii. contra hæreticos.* Ex reg. Arundel II. fol. 10, et MS. Eli. 235. et MS. Lamb. 17." Wilkins adds the following note:

MS. Eli. ad A.C. 1407, concilium hoc remittit. Constitutiones hæ in provinciali concilio Oxonii habito editæ, et deinde repetita promulgatione in concilio hoc Londinensi sancitæ fuerunt.]

*priests*;* and in the New Testament there was a distinction among the Apostles; and our Lord granted, and the Apostles agreed, that Peter called [b]Cephas, that is, the head, should be the prince of the Apostles, as being he to whom it was said "When thou art converted strengthen thy brethren:" as if he had said, if there be any doubt among them, do thou confirm them in what is good; which our Lord would not have said if He had not determined that others should obey him. But we experience to our grief, that the old sophister knowing that sound doctrine, as determined by the fathers, which keeps the people in the unity of the faith under one head, would obstruct his malice, endeavours to extirpate that doctrine, and falsely calls vice virtue, that by separating men by degrees from their universal sacred mother, he may erect to himself a church of malignants: he transforms himself into an angel of light while he traduces the ancient doctrine, and would bring in new ones of his own making, which he falsely pretends would be for the better; but he means nothing but schism, and the weakening of the faith (by contrariety of opinions [taken] from Jews, pagans, and other infidels, and perverse men) and the profanation of mysteries, by which the emblem in the Apocalypse is verified, [c]"One sitting on a black horse held a balance in his hand." By this heretics are meant, who allure people to them with an appearance of what is right and just under the figure of a balance, but afterwards comes the horse with his black tail scattering poisonous errors, and publishing scandals by persons elected to evil; who (alas) preach before they are sent, and sow before they have winnowed their seed: and by not considering the prohibitive decrees and canons against such sowers they prefer a diabolical sacrifice before obedience to the Church.

[Luke xxii. 32.]

[a] Here he evidently alludes to the murder of Becket, whose brains were dashed out by the assassins.

[b] Here the skill in languages and logic are both alike.

[c] Rev. vi. 5.

We therefore, considering that by not resisting error we might seem to approve it, and that we should cherish the viper by not suppressing it, and desiring to shake the dust off our feet, and consult the honour of holy mother Church,

* [Considerare enim deberent quod in antiquo traditur Testamento, Moyses et Aaron in sacerdotibus ejus, id est, primi inter eos fuerunt: S. W. Cf. Ps. xcix. 6. (xcviii. 6. Vulg.)]

and sow the one holy doctrine in the Church, especially in our province of Canterbury, (so far as we may with God's assistance,) to the increase of faith and divine worship, and for the rooting up of [d]tares, and whatever evils have sprung up by means of perverse preaching and unsound doctrine, to obviate all peril of souls, and removing all obstacles by which our province may be embarrassed, with the advice and consent of our suffragans, and other prelates present in this convocation of the clergy, and of the proxies of those that are absent, and at the instant petition of the proctors of the whole clergy of our province of Canterbury, and for the strengthening of the [e]common law made in this behalf, we add the just following penalties.

[d] As in this whole declamatory preface he evidently aimed at the Wiclifists, so more particularly in this place: they were commonly called Lollards, in allusion to the lolium or zizaniæ in the parable*, though some say from one Lolhard a German, who was some time before Wiclif†.

[e] By the common law is evidently meant the statute made to enable bishops to take up, imprison, degrade, lay fines on heretics, and if they proved obstinate, to deliver them up to the secular magistrate to be burned, which was made seven years before the following constitutions‡; so much more forward was the zeal of parliaments against heresy in this age than that of convocations.

1. We enact, decree, and ordain, that no [f]secular or regular, unless authorized by the [g]written law, or by special privilege, take to himself the office of preaching the word of God, or do in any wise preach to the people or clergy in Latin, or in the vulgar tongue, within a church, or [h]without it, unless he present himself to the diocesan of the place in which he attempts to preach and be examined; and then being found qualified both by manners and learning, let him be sent by the diocesan to preach to some certain parish or parishes, as to the same ordinary shall seem expedient, in respect to the qualifications of the man. And let none of the aforesaid presume to preach, unless assurance be first [Lynd., p. 288.]

* [Lyndwood, Provinciale, p. 200, gl. *Lollardiæ*. Cf. Chaucer, Squire's prologue, l. 10—21.]

† [Eodem anno (1309) quidam hypocritæ gyrovagi, qui Lollardi, sive Deum laudantes vocabantur, per Hannoniam et Brabantiam quasdam mulieres nobiles deceperunt. Hocsemius, l. i. c. 31. ap. Raynaldi Annales Eccl., tom. v. p. 101. *sub ann.* 1318. Walter the Lollard to whom Johnson refers began to preach in Germany A.D. 1315, and was put to death at Cologne in 1322. See also Du Cange, Glossarium, art. Lollardi.]

‡ ["2 Hen. IV." MS. note Wrangham. See Statutes of the Realm, 2 Hen. IV. c. 15. vol. ii. p. 125-8.]

given in proper form of their being sent and authorized; so as that he who is [i]authorized by written law, do come according to the form therein limited; and that they who say they come by [k]special privilege, do really shew that privilege to the rector or vicar of the place where they preach; and that they who pretend to be sent by the diocesans of the places, do shew the letters of that diocesan drawn for that purpose under his great seal. But we take a [l]perpetual curate to be sent by law to the place and people of his cure. But if any of the aforesaid be under a suspension or prohibition from preaching passed by the diocesan of the place or other superior, for any errors or heresies which he is pretended to have formerly preached, affirmed, or taught, let him not thenceforth preach any where in our province till he has purged that defect according to the determination of him who suspended or prohibited him; and be again restored to preach: to which purpose let him be bound to carry with him the letters testimonial of him that restored him, and shew them in the place where he preaches. But let [m]parish priests and temporary vicars (not perpetual) who are not sent in form aforesaid, only simply preach those things which are expressly contained in the provincial constitution (together with the usual [n]prayers) which was well and piously published by [o]John of good memory our predecessor, as a supply to the "ignorance of priests," with which words it begins. And we will that this be had in every parish church of our province of Canterbury within three months after the publication of these presents, and that it be effectually published by those priests every year, and every time that [the constitution] itself requires. And lest this wholesome statute should seem to mean some evil on account of any pecuniary exactions, we will and ordain that the examination of the persons aforesaid, and the letters of the diocesan to be drawn for them, be sped with all expedition, [p]gratis, and without any difficulty, by those whose office it is, and to whom it is known to belong. If any one do knowingly violate this our statute (which is only a putting the ancient law in execution) after its publication, by preaching of his own temerity, contrary to the form herein mentioned, let him incur the sentence of greater excommunication *ipso facto:* and we reserve the absolution of him to ourself and our successors, by the tenor of these

presents. But if such preacher despising this statute do a second time preach, teach, affirm, or pertinaciously by word or deed intimate that the Church has not power to make such ordinances by the persons of its prelates, let the sentence of excommunication be duly aggravated against them by the superiors of the places, [q]and let them be forbid all communion with Christian people: and when they are lawfully convicted of it, let them be declared heretics by the ordinary of the place, and from that time be reputed heretics and schismatics by all, to all effects of the law; and let them incur the penalties of heresy and schism, as expressed in the law *ipso facto*, and especially that their goods be deemed confiscated in law, and seized by those to whom they belong, unless they repent and abjure in the accustomed form of the Church. And if their fautors, receivers, and defenders desist not within a month, after they have lawfully been admonished in this behalf by their superiors, let them have the same punishment inflicted on them in all respects when they have been convicted of it.

[f] Supply priest; for none but a priest may preach, except a deacon be curate: for then he may preach to his own subjects. Lyndwood*.

[g] See note i below.

[h] Friars might preach in churchyards or streets. Lyndwood†.

[i] By the canon law, the pope is allowed to preach every where; the bishop in his own diocese, or in any other, where he is not expressly prohibited by the proper bishop. A master or doctor in divinity, or any preacher licensed to any parish or parishes, may be admitted to preach by any curate *in transitu*. Friars preachers, and minors‡ may preach any where of common right, though of old this was a privilege specially granted by the pope. Lyndwood§.

[k] These were Augustinian and Carmelite friars, who had no decretal inserted into the *Corp. Jur. Can.*, whereby to grant them a general licence, as the preachers and minors had¶.

[l] That is, the rector, vicar, or whoever had a perpetual title to the cure of souls in any church‖.

[m] This wholly sets aside the authority of can. 49, 1603; for these canons, and the old common law of the Church here declared by Lyndwood, are, I conceive, of greater authority than our last canons, which

* [Provinciale, p. 288, gl. *Sæculares.*]

† [*Aut extra.* Scil. in cœmeterio, vel plateis publicis, prout est concessum fratribus. *de sepult. c. dudum. ver. prædicare. per Paulum in Clem.* ibid.]

‡ [i. e. Dominicans and Franciscans.]

§ [Provinciale, p. 289, gl. *Auctorizatus est.—Limitata in eo.*]

¶ [Ibid., gl. *Privilegio speciali.*]

‖ [Ibid., gl. *Vicario.*]

were never authorized by parliament, as these old provincials are, so far as they are not contrary to prerogatives royal, &c.

[n] The bidding of the beads is here evidently meant, of which you have a very ancient form in Anthony Harmer *. It was called prayers, by reason of the Kyrie Eleison, Ave Maria, and Paternoster, being several times repeated after the several exhortations: so the exhortation to prayer in the fifty-fifth canon is called a prayer in the title of that canon on account of the Lord's Prayer, with which the preacher is to conclude it.

[o] See const. 9. of Peckham, A.D. 1281.

[p] It is certain this constitution as to this clause of granting the licence without pay is as much in force as any ecclesiastical canon or provision that ever was made in England. Lyndwood says nothing must be accepted, though the priest freely offer it, and proves it from the canon law †.

[q] The sentence of greater excommunication was aggravated by actually excommunicating them that conversed with those who were under this sentence with a lesser excommunication; and if they persisted to converse with them after admonition given, with a sentence of greater excommunication.

[Lynd., p. 294.] 2. Farther, let not the clergy or people of any parish or place whatsoever in our province admit any one to preach in churches, churchyards, or any other places, unless full assurance be first given of his being authorized, privileged, or sent, according to the form aforesaid; otherwise, let the church, churchyard, or ⌜other place whatever where the preaching was, be *ipso facto* laid under ecclesiastical interdict, and so remain till they who admitted or permitted him so to preach, have made satisfaction, and have procured a relaxation of the interdict in due form of law to be made by [3. W.] the diocesan or other superior. Farther, as the good husband- [Lynd., p. 294.] man sows his seed on such ground as is most fit to produce corn, we will and command that the preacher of God's word coming in form aforesaid, do observe a decorum as to the subject matter in his preaching to the clergy or people, so that the seed be fitted to the auditory under him, by preaching to the clergy chiefly of those vices that are growing up among them; and to the laymen of the sins most rife among them, and not otherwise. Else let him that so preacheth be canonically and sharply punished by the ordinary of the place, according to the quality of the offence.

* [See "Errors and Defects in (Bp. Burnet's) Hist. of Reformation, by Anthony Harmer," (i. e. Henry Wharton,) pp. 68, 166-8. Lond. 1693.]

† [Provinciale, p. 291, gl. *Exactione.*]

[r] By the place here we are to understand the men of the place. Lyndwood*.

3. Because that part which does not agree with its whole is rotten, we decree and ordain that no preacher of the word of God, or other person, do teach, preach, or observe any thing in relation to the sacrament of the altar, matrimony, confession of sins, or any other sacrament of the Church or article of faith, any thing but what hath been determined by holy mother Church, nor call in question any thing that has been decided by her; nor let him knowingly speak scandalously either in public or private concerning these things; nor let him preach up, teach, or observe any sect or sort of heresy contrary to the sound doctrine of the Church. Let him incur the sentence of excommunication *ipso facto*, who knowingly and pertinaciously attempts the contrary after the publication of these presents; from which let him not be absolved except at the point of death, unless he reform himself (by first abjuring heresy generally or simply in the accustomed form of the Church, at the discretion of the ordinary, in whose territory he is convicted of having committed the offence;) and have received salutary penance for what he has done: [s]and if he undertake to do this a second time, and so relapse†, let him be declared a heretic and relapse convict by sentence formally passed, and let his goods be deemed confiscated, and seized by [s]them to whom they belong. And we will that the penance before mentioned be such, that if any man have publicly or privately taught, preached, or affirmed any thing contrary to the determination of the Church, contained in the decrees, decretals, or our [t]constitutions provincial, or any sort of heresy or sect, he shall expressly recant the things so preached, taught, or affirmed in the parish church of the place where he preached, taught, or affirmed them, upon some one or more Lord's-days, or other solemn days, at the discretion of the [u]ordinary, according as he is convicted to have offended more or less, at high mass, when the greatest number of people is present; and shall effectually and without fraud preach, teach, and recite the [4. W.] [Lynd., p. 295.]

* [Provinciale, p. 294, gl. *Quicunque locus.*]

† [Quod si secundo se ingesserit, sicque recidivaverit, vel relapsus fuerit, Lynd.

Quod si secundo se ingesserit, recidivaverit, seu relapsus fuerit, W.]

determinations of the Church; and shall be otherwise punished in proportion to his demerits, as shall seem most expedient to the ordinary.

[s] The immovable estates both of clerks and laymen belonged to the secular or ecclesiastical lord of the fee, and so did the movable goods of laymen; but the movables of clerks, in this case, belonged to the churches in which they were beneficed; and if they were not beneficed, to the bishop of the diocese. Lyndwood*.

[t] That is, all this book of provincial constitutions, says Lyndwood, not Arundel's only. And he asserts the obligation of all these constitutions from the canon law†.

[u] Lyndwood asserts the bishop to be ordinary in cases of heresy, even in exempt religious houses: he confesses, that according to the canonists, they are but delegated ordinaries; but seems to think they are delegated by law, (meaning the canon law,) though popes were willing to have it thought they were delegated by them. To me the opinion of these canonists seems most just, who said that the power of the bishop in places exempt (as to the point of heresy) was a restitution of his ordinary power; and that therefore he was the proper ordinary by this restitution, as he certainly was before the popes wrested this power from him by granting these exemptions. Yet Lyndwood owns that this constitution does not reach exempt places, unless they were parish churches‡.

[5. W.] [Lynd., p. 282.] 4. Because an old vessel retains a relish of what it first contained, we enact and ordain that masters and all who teach boys or others the arts, or grammar, and that instruct men in the first sciences, do by no means undertake to instruct them§ in the sacrament of the altar, or other sacraments of the Church, or upon any theological point contrary to the determinations of the Church; nor in expounding any text of Scripture otherwise than of old it used to be expounded; and that they do not permit their scholars or disciples publicly or even privately to dispute concerning the Catholic faith, or the sacraments of the Church. Let him that transgresses be severely punished as a fautor of errors and schism by the ordinary of the place.

* [Provinciale, p. 297, gl. *Occupentur.*]

† [Ibid., gl. *Nostris.—Provincialibus.*]

‡ [Provinciale; p. 297, gl. *Ipsius loci.—Ordinarii ipsius loci.* Lyndwood refers to an earlier gloss on the same constitution, where among other statements he has the following: *Ordinarii.* i. e. Episcopi in suis diœcesibus, qui habent ordinariam jurisdictionem circa non exemptos suæ diœcesis: Circa exemptos vero in sua diœcesi existentes habent jurisdictionem delegatam a papa, ibid., p. 298.]

§ [Johnson *omits*, de fide catholica, Lynd., S. W.]

5. Because a new path oftener misleads men than an old, [6. W.] we will and ordain that no book or treatise composed by [Lynd., p. 284.] [x]John Wicklif, or by any other in his time, or since, or hereafter to be composed, be henceforth read in the schools, halls, inns, or other places whatsoever within our province aforesaid, and that none be taught according to such [book] unless it have been first examined, and upon examination unanimously approved by the university of [y]Oxford or Cambridge, or at least by twelve men chosen by the said universities, or by one of them under the [z]discretion of us, or our successors; and then afterwards [the book be approved] expressly by us, or our successors, and delivered in the name, and by the authority of the universities, to be [a]copied, and sold to such as desire it; after it has been faithfully collated at a just price, the original thenceforth remaining in some chest of the university for ever. And if any one shall read book or treatise of this sort in the schools or elsewhere, contrary to the form above written, or shall teach according to it, let him be punished according as the quality of the fact shall require, as a sower of schism, and a fautor of heresy.

[x] Lyndwood here calls Wicklif an arch-heretic, and says, by his doctrine all Bohemia was poisoned; and adds, that his body, at the command of the apostolical see, was taken out of its grave and then cast into a neighbouring river; and that Richard Flemming, bishop of Lincoln, executed this sentence. And this year, says he, 1429, Pope Martin V. has raised a crusade against Bohemians, as rebels against the orthodox faith*.

[y] It seems plain that Oxford was by this time in some measure recovered from its zeal for Wicklif. For this university was the great strength of his party; and it seemed to little purpose for the prelates to attempt any thing against him and his opinions in an ecclesiastical way, while he had so great a body of the most learned men in England on his side. Fifty years were now almost past since Wicklif began to preach; and nothing

* [*Johannem Wickliff.* Hæresiarcham magnum, qui multas hæreses antiquas resuscitavit in Anglia tempore suo, et ex cujus doctrina tota Bohemia intoxicata extitit, et est de præsenti; in tantum quod Papa Martinus quintus modernus contra ipsos Bohemos Fidei orthodoxæ rebelles cruciatam erexit hoc anno Domini 1429, sub ductura reverendissimi patris domini Henrici (Beaufort), tituli sancti Eusebii, Presbyteri Cardinalis Angliæ dicti Winton: in partibus Germaniæ, Hungariæ, et Bohemiæ apostolicæ sedis legati: et dicti Johannis Wickliff corpus, quod erat sepultum in ecclesia parochiali de Loterworth. Lincoln. diœcesi ubi fuit rector, de mandato et decreto sedis apostolicæ fuit exhumatum, et ejus ossa combusta, cineribus eorundem projectis in proximum amnem ad damnationem et deletionem memoriæ suæ, reverendo patre domino Richardo Flemyng, Lincoln, episcopo moderno præmissa exequente, anno Domini 1428. Provinciale, p. 284.]

could have stopped the progress of his doctrine but so severe a statute made in the second year of this king's reign, and a violent execution of it. Archbishop Sudbury endeavoured once and again to have Wicklif solemnly condemned as a heretic by the bishops; for which end he caused them to be assembled; but his design was defeated, and the assemblies broke up in confusion; so that he was forced to be satisfied with a condemnation of his doctrines, and a process against some of his followers. Pope Gregory XI. condemned his opinions, and cited him to appear at Rome; but neither he nor his agents here in England could ever get him into their clutches; so that he died in peace rector of Lutterworth in Leicestershire, A. D. 1387. But now the popish prelates having reduced Oxford, and being fortified with a statute which made heresy a capital crime, proceed against him after his death, with a zeal agreeable to their principles. The encomium given by the university of Oxford to Wicklif at the end of the works of John Huss, and the affirmation that he had never been condemned by the bishops, must be mis-dated; 1406 is too late for such a representation *.

[z] *Sub discretione laudabili*, Lat.; that is, says Lyndwood, that the names of the twelve persons should be reported to the archbishop before they were finally chosen, and he consent to their being elected; and that discretion is laudable, as he adds, which makes no unreasonable exceptions in case that the persons were well qualified †.

[a] Printing was an art not yet practised in England. If Wicklif's books could have been dispersed in as great numbers, and with as much expedition as other books since this art has been in use here, it is probable he himself by this means had lived to see a public legal reformation.

[7. W.] [Lynd., p. 286.] 6. The translation of the text of Holy Scripture out of one tongue into another is a dangerous thing, as blessed Hierome testifies, because it is not easy to make the sense in all respects the same; as the same blessed Hierome confesses that he made frequent mistakes in this business, [b]although he was inspired: therefore we enact and ordain that no one henceforth do by his own authority translate any text of Holy Scripture into the English tongue or any other [c]by way of book or treatise. Nor let any such book or treatise now lately composed in the time of John Wicklif aforesaid, or since, or hereafter to be composed, be read in whole or in part, in public or in private, under pain of the greater excommunication, till that translation have been approved by the diocesan of the place, or if occasion shall require, by a

* [Johannis Hus Hist. et Mon. pars ii. *ult. pag.* ed. Noriberg. 1558; cf. *Literæ testimoniales universitatis Oxon. in favorem doctrinæ et vitæ Johannis Wycliff.* A.D. 1406. Ex MS. Cott. Faust. C. 7. Wilkins, vol. iii. p. 302.]

† [Provinciale, p. 285, gl. *Discretione laudabili.*]

provincial council. Let him that transgresseth be punished as a fautor of heresy and error *.

* [The following is Lyndwood's text of the above constitution, with the more important of his glosses upon it:

Periculosa res est, testante Beato Hieronymo, textum Sacræ Scripturæ de uno in aliud idioma transferre, eo quod in ipsis translationibus non de facili idem sensus in omnibus retinetur, prout idem Beatus Hieronymus, etsi inspiratus fuisset, se in hoc sæpius fatetur errasse. Statuimus igitur et ordinamus, ut nemo deinceps textum aliquem Sacræ Scripturæ auctoritate sua in linguam Anglicanam vel aliam transferat per viam libri vel libelli, aut tractatus, nec legatur aliquis hujusmodi liber, libellus, aut tractatus jam noviter tempore dicti Johannis Wickliff, sive citra compositus, aut in posterum componendus in parte vel in toto, publice vel occulte sub pœna majoris excommunicationis, quousque per loci diœcesanum, seu si res exegerit, per concilium provinciale ipsa translatio fuerit approbata. Qui vero contra hoc fecerit, ut fautor hæreseos et erroris similiter puniatur.

*Periculosa.* Ista constitutio est ejusdem cujus et præcedens, et habet quatuor dicta. In primo ponit causam motivam sui statuti. In secundo ibi, *Statuimus*, statuendo prohibet Scripturam Sacram transferri in linguam Anglicanam, vel aliam, auctoritate propria ipsius transferentis. In tertio ibi, *Nec legatur*, prohibet usum sive lecturam certorum librorum translatorum. In quarto ibi, *Qui contra fecerit*, adjicit decretum punibile præmissorum.

*Beato Hieronymo textum. Textus* est liber Doctorum continens tractatum sine literæ vel sententiæ expositione. *Vel textus* est ipse tractatus libri sine expositione literæ vel sententiæ, secundum *Januen.*

*Sacræ Scripturæ.* Id est, Bibliorum, quæ continent Vetus et Novum Testamentum. 9. *dist. si quis nesciat.*

*Idioma.* i. e. Proprietatem loquendi.

*Auctoritate sua.* i. e. judicio suo. Secus si auctoritate Episcopi, ut putet *infra. e. ver. nec legatur.*

*Libri.* Sc. de novo compilandi, ut patet *infra. ver. sequen.* Secus si hoc fiat per modum sermonis publici, exponendo textum in lingua vulgari. Et quod dicit, *per viam libri* intelligere potes sic, videlicet, ut inde conficiat librum continentem tota Biblia. Appellatione namque *libri* simpliciter sumpti continetur liber completus et integer, et non secundum partes numerales, prout sæpius unum volumen dividitur in plures libros, ut patet in Bibliis. Ad quod facit *ff. de leg. 3. l. librorum.* vel potes intelligere sic, ut scil. unum librum particularem textus Bibliorum transferat. Nam talis particularis translatio poterit dici *libellus*, ut sequitur.

*Aut Tractatus.* Sic videlicet, quod de dictis Doctorum, vel propriis, aliquem tractatum componat applicando textum Sacræ Scripturæ, et illius sensum transferendo in Anglicum, vel aliud idioma. Et eodem modo potest intelligi, quod dicit de libro sive libello, *ut* scil. textum Sacræ Scripturæ in tali libro vel libello applicet, et textum ipsum transferat in aliud idioma.

*Hujusmodi liber.* Scil. translatus de textu Sacræ Scripturæ.

*Noviter.* Sume quod est *infra. compositus.* Et ex hoc quod dicit, *noviter compositus*, apparet, quod libros, libellos, vel tractatus, in Anglicis vel alio idiomate prius translatos de textu Scripturæ legere non est prohibitum. *concor. supra eo. c. proxi.* § 1.

*Excommunicationis pœna.* Scilicet ferenda, et sic comminatio est.

*Diœcesanum.* Non igitur potest hoc fieri per inferiorem, nisi de ipsius mandato.

*Res exegerit.* Quia forsan materiæ in tali libro, libello, vel tractatu contenta requirunt altiorem indaginem, et plurium sapientium investigationem. Vel quia concernunt Fidem, vel Ecclesiam Universalem, et ipsius regimen, et alia hujusmodi.

*Concilium Provinciale.* Quod singulis annis semel ad minus debet celebrari. *Extra. de accus. c. sicut olim.*

*Approbata.* Ratio est, quia licet nudus textus Scripturæ fuerit translatus, potest tamen transferens in translatione errare. Vel si librum, libellum, aut tractatum compilaverit, potest, ut frequenter accidit, cum veris falsa et erronea admiscere.

*Erroris.* Quia præstat occasionem alios inducendi in errorem, qui ex talis libri, libelli vel tractatus lectura inficerentur. Lyndwood, Provinciale, p. 286.]

[b] Lat., *etsi inspiratus fuisset, se in hoc sæpius fatetur errasse.* This and the following obscurity seem to be affected: all three copies agree in both places; and this constitution is plainly of a piece with all the other provisions made by the Romanists on this head. They boast that the translation of scripture is not forbidden, nor the use of it, by any absolute law or precept of their Church. But the artifices and evasions used by the ruling part of that Church do as effectually keep the Bible from the eyes of the people, as a thousand prohibitive laws or canons could do it.

[c] *Textum aliquem Sacræ Scripturæ———per viam libri, libelli, aut tractatus,* Lat.; "any text" may signify either the Hebrew, Greek, or Latin text, and then it signifies the whole Bible. Text may denote only some particular verse or verses of the Bible. Book may denote the whole Old and New Testament, as Lyndwood observes, or it may import some one book of either. But treatise, as the same Lyndwood suggests, properly signifies a work wherein Scripture is applied to some sayings of the doctors, or of one's own: so that this net seems to be made for the catching or letting go whomsoever and whatsoever they pleased.

[8. W.] [Lynd., p. 286.]

7. Since the determiner of all things cannot be concluded by philosophical terms, or human inventions, and blessed Augustin does frequently revoke true conclusions which were offensive to pious ears, we ordain, and with an obtestation of the divine judgment, we in a very special manner forbid any man of what degree, estate, or condition soever he be, to assert or propose any conclusions or propositions that carry a sound contrary to the catholic faith, or good manners, (saving the necessary doctrines of his faculty,) in disputing in the schools, or out of them, or in conversation, with or without a protestation; even though they may be defended by subtility of words: for, as blessed Hugo says, what is well said is often not well understood. But if any one after the publication of these presents shall be convicted knowingly to have proposed or asserted such conclusions or propositions, unless upon admonition he reform himself, by the authority of this present constitution let him incur the sentence of the greater excommunication *ipso facto,* and be publicly denounced excommunicate, till he publicly confess his offence in the place where he made such propositions or assertions, and have publicly preached the true catholic meaning of the said conclusion or proposition, at the discretion of the ordinary, in one or divers churches, as shall seem expedient to the ordinary.

[9. W.] [Lynd., p. 297.]

8. Let no one presume to dispute of things determined by

the Church (as they are contained in the decrees, decretals, or provincial constitutions, and the synodal [constitutions] of places) either publicly, or privately; unless it be in order to get the true meaning of them; nor call in question the authority of the said decrees, decretals, or [d]constitutions, or the authority of [e]him that made them; or preach contrary to their determination, especially concerning the adoration of the glorious cross, the veneration of the images of saints, or pilgrimages to their places and relics; or against making oaths in the usual cases and manner in both courts, viz., ecclesiastical and temporal. But let all henceforth preach up the veneration of the cross, and of the image of the crucifix, and other images of saints in memory and honour of them whom they resemble, and their places, and relics, with processions, genuflexions, bowings, incensings, kissings, oblations, pilgrimages, illuminations, and all other modes and forms whatsoever used in the times of us and our predecessors; and the making of oaths in a lawful manner, by touching God's holy gospels, and upon the same in cases expressed in the law, and used in both courts by all who are concerned. Let him that asserts, teaches, preaches, or pertinaciously intimates the contrary incur the penalties of heresy, and of a relapse into the consequences of it, and be sentenced to such, as to all effects of the law, unless he do penance in manner and form elsewhere by us appointed, and abjure as it is there provided.

[d] Lyndwood's text at present adds "provincial;" but his own text seems to have had no such word. For his gloss on the word *Constitutionum* is *sive provincialium, sive synodalium* *.

[e] This constitution here fairly owns that all constitutions, decretals, or decrees, are made by the authority of one man, viz., diocesan constitutions by the bishop, provincial constitutions by the archbishop, decretals and decrees by the pope; so that the priests in the diocese, the suffragan bishops in the province, the cardinals in the conclave, were only applauders.

9. We ordain and decree that none be admitted to celebrate as chaplain in any diocese of our province of Canterbury, who was not born [f]or ordained there, unless he bring with him the letters of his [g]orders, and the commendatory [10. W.] [Lynd., p. 48.]

* [Provinciale, p. 298.]

letters of his [h]diocesan, and also of other bishops in whose dioceses he has any length of time stayed: which letters we will and command to be cautious and express in regard to the manners and conversation of the person; and whether he have been defamed for and concerning the new opinions which have an ill aspect on the Catholic faith and good manners, or whether he be wholly clear as to these points. Let him that celebrates, and he that permits it without such letters, be sharply punished.

[f] Though he was born, yet if he was not ordained in the diocese, Lyndwood says, the constitution takes hold of him; and though he was both born and ordained there, yet if he have been long in another diocese, he ought to have a certificate of his behaviour *.

[g] Not only of his priesthood, but of his inferior orders, says Lyndwood †. If so, the secretaries of those bishops who detain the letters of deacons' orders from such as are ordained priests, are much to blame.

[h] Or of any person who has the privilege of giving such letters, viz., the chancellor of either university. Lyndwood ‡.

[11. W.] [Lynd., p. 299.] 10. New and unusual emergencies require new and mature applications; and the greater the danger the more caution and opposition is necessary. What is less valuable should be discreetly pruned off for the improvement of what is truly noble. 'Considering and lamenting how our almous university of Oxford, which like a thriving vine used to spread her branches to the honour of God and the advancement and protection of His Church, is in part degenerated and brings forth sour grapes, by eating whereof many of her sons, being too well conceited of their knowledge in the law of God, have set their teeth on edge, and our province is infected with new unprofitable doctrines, and blemished with the new damnable brand of Lollardy, to the great scandal of the university itself, reaching to remote foreign parts, and to the exceeding regret of those who study there; and to the seemingly irreparable damage of the Church of England, (which used to be defended by her virtue and learning, as with an impregnable wall, but whose stones are now squandered,) unless speedy remedy be used §: therefore upon

* [Provinciale, p. 48, gl. *Non fuerit.* Cf. p. 49, gl. *Sui diœcesani.*]

† [Ibid.]

‡ [Ibid., p. 49, gl. *Episcoporum.*]

§ [Considerantes igitur, sed dolenter referentes, quomodo alma[l] univer-

the petition of the proctors of the whole clergy of the province of Canterbury, and with the consent and assent of all our brethren and suffragans, and the other prelates that are present in this convocation of the clergy, and of the proxies of the absent, (lest the fountain head being polluted the stream be made impure, even after the cleaning of the river;) we desiring to make wholesome provisions for the honour and utility of holy mother Church, and of the university aforesaid, do enact and ordain that every warden, provost, and rector of a college, and the principal of every hall or inn of the said university, do once at least in every month make enquiry with diligence in the college, hall or inn, over which he presides, whether any scholar or inhabitant thereof have asserted, held, defended, or in any wise proposed any conclusion or proposition that carries a sound contrary to the Catholic faith or good manners, against the determination of the Church, though it were no necessary doctrine of his faculty: and if he find any one suspected or defamed in this respect, let him admonish him effectually to desist; and if he do after this admonition again advance the same, or like [tenets], let him incur the sentence of the greater excommunication *ipso facto*, beside other punishments appointed by us. And yet, if he who do this be a scholar, let nothing that he does thenceforward in the said university, be taken as done in due form[1]: and if he be a doctor, master or bachelor, let him be thereupon suspended from all scholastic acts, and let him in both cases *ipso facto* lose all right that he has in the college, hall or inn, and let him be actually expelled by the wardens, rectors, provosts, principals, or others whom it concerns, and let a catholic forthwith be legally substituted

sitas Oxon. quæ, sicut vitis abundans suos palmites fructuosos, ad honorem Dei, multiplicemque profectum, et protectionem ecclesiæ suæ consuevit extendere, jam partim versa in labruscas, uvas acerbas gignit, quibus indiscrete comestis a patribus, in lege videlicet Dei reputantibus se peritos, dentes obstupescunt filiorum, nostraque provincia variis et infructuosis doctrinis inficitur, ac novo et damnabili Lollardiæ nomine maculatur, in ipsius universitatis scandalum non modicum, ad partes exteras et remotas extensum, et proficiscentium[2] in eadem permaximum tædium, necnon et ecclesiæ Anglicanæ, quæ per virtuosam doctrinam ejusdem, tanquam muro inexpugnabili defendi solebat, jam scissis et divisis lapidibus, nisi celerius occurratur, secundum verisimile, irrecuperabile damnum. W.

[1] mater E. MS. *addit.* Wilkins, vol. iii. p. 318. note w.

[2] proficientium, MSS. ibid. note y. So Lyndwood, Provinciale, p. 300.]

in his place. And if the wardens, provosts, rectors of colleges, or principals of halls or inns, where such suspected, detected or defamed persons are, be negligent in their enquiries or execution of the premisses, for ten days next following the [k]real or presumed publication of these presents, let them *ipso facto* incur the sentence of the greater excommunication; and yet let them be *ipso facto* deprived of all right which they pretend to have in those colleges, halls or inns; and let the colleges, halls and inns, be effectually void; and after a lawful declaration made thereof by such as are concerned to do it, let new wardens, rectors, provosts or principals be substituted according to the ancient custom of the said university. But if the wardens, rectors, provosts or principals themselves are suspected, defamed or detected, for and concerning such conclusions or propositions, or as defenders, maintainers or fautors of them, if upon an admonition from us, or by our authority, or by the [l]ordinary of the place, they do not desist, let them be deprived in law from that time forward of all scholastic privileges of the university aforesaid, and of the right which they had in the said college, hall or inn, beside other punishments above-mentioned, and farther
[12. W.] incur the sentence of the greater excommunication. And if
[Lynd., p. 302.] any man rashly and pertinaciously presume to violate these our statutes in any case mentioned in this constitution, in the last, or in any other above expressed, although some other punishment be there expressly assigned, let him thereupon be made wholly incapable from that time forward of obtaining any ecclesiastical benefice in our province of Canterbury for three years, without any hope of pardon; and yet be canonically punished at the discretion of his superior, in proportion to his demerits, and according to the quality
[13. W.] of his excess: further, lest we should leave any thing at un-
[Lynd., p. 302.] certainties, we observe that in several [m]laws some parity between the crime of heresy and lese-majesty is mentioned, and yet that the guilt is unequal; and the offending the Divine majesty requires a severer punishment than offending human majesty; since therefore he who is guilty of lese-majesty may be convicted by informations, and be proceeded against in a summary unformal manner, (because of the danger of delay,) and by first sending a citation by letters, by a

messenger, by edict, and without a [n]*litis contestatio*, to the hearing of witness, and to a definitive sentence: we will, ordain and declare, that for the more easy punishment of offenders in the premisses, and for the making up the breach of the Church, that hath been injured by this means, such as are defamed, detected, denounced or vehemently suspected in any of the aforesaid cases, or in any other article that carries a sound contrary to Catholic faith or good manners, be personally cited by authority of the ordinary of the place or other superior, by letters, or by a sworn messenger, if they can be caught; but if not, then by an edict at the place where the offender hath an house in which he commonly dwells, and published in the parish church, if he have a place of habitation, if not, in the cathedral church of the place of his birth, and in the parish church of the place where he so preached and taught; and when a lawful certificate is received of the summons having been executed, let them proceed against the party thus cited, though he be absent and neglect to appear, ([o]without noise and forms of judicature, or a *contestatio litis*, upon the hearing of [p]evidence and other canonical proofs,) as a punishment for his contumacy. Let the same ordinary, upon lawful information received, without delay, sentence, declare and punish him according to the quality of his offence, in manner and form before expressed, and further do justice upon the contumacious notwithstanding his absence*.

[i] In order to qualify him for a degree.

[k] Lyndwood takes the real publication to imply the parties being present at the time of doing it; the presumed to denote its being generally known to have been published, though two or three may pretend ignorance: and this ignorance well proved excused the offenders for two months after such publication†.

[l] In this case the chancellor of the university is an ordinary. Lyndwood‡.

[m] This is to be understood of the imperial civil-law.

[n] This is a term which in the canon-law signifies actually opening the cause before the judge, after citation and return of it, and constituting a proctor, and bringing in the libel or declaration.

* [Johnson *omits*, Datæ Oxonii. S. W. See above, p. 457. note *.]

† [Provinciale, p. 301, gl. *Veræ.*—]

‡ [Ibid., p. 302, gl. *Ordinarium loci.*]

*Præsumptæ.*]

[o] This summary way of proceeding against heretics was thought a great grievance, not only because the formal way was most dilatory, but because the defendant had not the advantage of such slips and mistakes as are often made by judges, advocates or proctors, in a long process.

[p] Another grievance justly complained of in case of heresy was, that any person, though excommunicate, infamous, and though he was himself guilty of heresy, might be witness in this case; nay, he that had deposed against a suspected person could not null his evidence by his own declaring himself forsworn in what he had deposed: but if a witness had deposed in favour of a suspected party, and afterwards swore the contrary, the last oath stood, not the first: only personal malice was an allowed exception against a witness in this case. Lyndwood *. This constitution and these glosses are a sufficient proof of the inexcusable fury of the papists against all that differed from them.

[Sir H. Spelman, vol. ii. p. 668. Lynd. app., p. 68. Wilkins, vol. ii. p. 320†.]

[q]Thomas, by divine permission, archbishop of Canterbury, primate of all England, and legate of the apostolical see, to our venerable brother, lord Richard, bishop of London, health, and brotherly charity in the Lord. Whereas in our provincial council lately celebrated at Oxford, we did with the advice and consent of you and our other venerable brethren and suffragans, at the instant petition of our whole clergy of the province of Canterbury, make certain provincial constitutions against the evangelical detractors who endeavour to sow tares in the Lord's field, that is, the Church militant, and did afterwards repeat the publication of them in our last convocations celebrated in the church of St. Paul's, London, before you and our venerable brethren, and clergy, in due form, as we believe you cannot be ignorant; we farther considering that laws are made in vain unless they be duly executed, [send you] the said constitutions annexed to these presents enclosed under our seal, commanding you (lest any one might plead ignorance) that ye transmit copies of these constitutions under your seal, and letters (which are to contain a copy of these) to every venerable our brother and suffragan of our said province, and enjoin them by our authority (as we do by these presents) that they do every one publish, or cause to be published in due canonical manner, the said constitutions in every of their cities and dioceses, as it concerns them to do in their synods and chapters

* [Cf. Provinciale, p. 302, gl. *Receptionem.*]

† ["*Commissio episcopo London. ad publicandum constitutiones prædictas in concilio Londinensi factas.* Ex reg. Arundel 11. fol. 12, b."]

according to canonical and provincial constitutions in this respect made; and do ye, our venerable brother, execute the same in like manner in your cities and diocese as it concerns you to do; and by your letters patent (containing a copy of these) duly certify us of the day when ye received these presents, and of the manner and form of your executing them, and what ye have done in the premisses before the feast of St. John Baptist next coming; and firmly enjoin our venerable brethren by our authority, that every one of them do make a like certificate to us in due and distinct manner before the feast aforesaid. Dated in our castle of Queenburg, 13th day of April, in the year of our Lord 1409, and of our consecration the 14th*.

[q] The following letter is only in the Oxford copy†.

* [et nostræ translationis anno tertiodecimo. S. W.]

† [That is, not in Lyndwood's Provinciale, but in the appendix to the edition, Oxon. 1679.]

## A.D. MCCCCXV.

### ARCHBISHOP CHICHLEY'S CONSTITUTIONS.

LATIN. [Lynd., p. 103.] Sir H. Spelman, vol. ii. p. 669. [Lynd. app., p. 68. Wilkins, vol. iii. p. 376.]

THE constitution of the venerable father in Christ, Henry Chichley, archbishop of Canterbury, published from Ottefordford, A.D. 1415, in the third year of Henry V., the magnanimous king of England, the apostolical see being then vacant by the deposition of John XXII. alias XXIII.

1. Henry, by divine permission, archbishop of Canterbury, primate of all England, and legate of the apostolical see, to our venerable brother the lord Richard, bishop of London, health and brotherly charity in the Lord. The Lord of ineffable might, whose highness is unbounded, governs all things in heaven and earth with right judgment; and though He bestows honours and blessings to all His ministers in heaven; yet He favours some of the inhabitants of the several countries of Christendom with peculiar praises and rewards, such as He hath intended for special patrons and intercessors; that so the devotion of the people under such a patron and intercessor, established by the constant mercy of God, may be more big with the praises of them. Upon consideration of this, the faithful people of England, though bound duly to praise God in all His saints, yet especially to extol and sound forth praises, and venerate Him with peculiar honours in His most glorious martyr the blessed George, the special patron and protector of the nation, as the speech of the world and the experience of grace from above (the best interpreter of all things) do attest. For by his intervention not only the English army is protected against the assaults of enemies in time of war; but the host of the clergy is corroborated in their peaceable

fight under the suffrage of so great a patron, as we undoubtedly believe. We therefore desiring that the praises of God in His saints may be amplified, excited by the admonitions of the king and the people of the kingdom, and by the advice of our brethren, and of the clergy of our province, and supported by the decree of our provincial council, imitating the devotion of the holy fathers towards God's saints, do will, ordain, and charge, with the express consent of our brethren and clergy, that the feast of blessed George the martyr be celebrated solemnly every year for the time to come for ever, in the manner, and with the office of a double feast, both by the clergy and people of our province of Canterbury in all churches of the same. And we charge that there be a cessation from all servile work on the said feast in all the cities and places of our province, as on the feast of the Nativity of our Lord; that the faithful people may assemble in greater numbers, praise God, and more devoutly implore the patronage of this saint and of all the blessed, and more fervently pray for the safety of the king and kingdom.

Farther, by authority of the said council we decree, and do also ordain by these presents, that the feasts of Saints David and Chad, bishops, and of Wenefred the virgin be perpetually celebrated for the future through our whole province of Canterbury at their proper seasons, viz., St. David on the first, St. Chad on the second day of March, Wenefred on the third day of November, with a [a]regimen of the choir and nine lessons. And we command and firmly enjoin you our brother by the tenor of these presents, that ye solemnly celebrate the feasts aforesaid every year for the future in the solemn manner before mentioned, and cause the same to be done in your city and diocese both by clergy and laity. And we will and command that ye do by authority of us and the said council, command and enjoin our fellow bishops, and suffragans of our church of Canterbury, whom we in like manner do command and enjoin, that every one of them do cause the said feasts every year perpetually for the future to be solemnly celebrated in manner aforesaid by the clergy and laity in their cities and dioceses. And do ye distinctly certify us by your letters containing a copy of

these, signed with your seal, before the feast of the Purification of the blessed Virgin Mary next to come*, of what ye have done in the premisses, and how, and in what manner ye have executed this present mandate. And do ye command every one of our brethren aforesaid, that they do not neglect particularly in like manner to certify us, so far as this mandate concerns their cities and dioceses, before the feast of Easter next coming; under such penalty as ought to be inflicted on you and them, if ye do otherwise. Dated in our manor of Otteford the 4th day of January, in the year of our Lord 1415, and of our translation the second. Oxford edit., p. 69.

[a] I take the regimen of the choir to have consisted in the greater exactness and artfulness of the music, and the festival habits of them who presided in it.

[Lynd., p. 129; App., p. 69. Wilkins, vol. iii. p. 370 †.]

2. Whereas the Church suffers great scandal, and ecclesiastical censure and authority grows cheap from that presumption, which [b]married and [c]bigamous clergymen, and even [d]laymen are guilty of in exercising ecclesiastical jurisdiction, and in trying, punishing, correcting and decreeing letters of excommunication for crimes and excesses belonging to the cognizance of the Church, sometimes in their own name, sometimes under the cover of another man's name; and in being scribes, or registers, and keepers of registries in businesses concerning such corrections. We therefore desiring to oppose such scandals, and to provide for the honour of the Church in imitation of the ancient canons, do ordain and enact by authority of this present council, that no married or bigamous clerk nor layman do for the future exercise any spiritual jurisdiction whatsoever under any pretence, either in his own name, or in any other's; nor be scribe, register, or keeper of a registry in any wise in causes of correction, or when the judge proceeds to the correction of the soul, or [e]*ex officio:* and that whatever ordinary inferior to a bishop, or whoever having ecclesiasti-

* [citra festum B. Matthiæ apostoli prox. futur. W. Johnson's translation agrees with Spelman and Lynd. app.]

† ["*Constitutio provincialis de clericis conjugatis, cum episcopi Exon. certificatorio de executione ejusdem.* Ex reg. Exon. Stafford, A. fol. 205."]

cal jurisdiction presumes to receive a married, or [f]bigamous clerk, or any layman into the said [offices], or any of them, or knowingly to tolerate or retain them in such office of jurisdiction; or that does not remove such an one, whether already admitted or hereafter to be admitted, within the space of two months after the publication of this constitution; let him incur the penalty of suspension from the exercise of such jurisdiction, and from entrance into the church *ipso facto*. And farther, let the citations, processes, sentences, and all acts whatsoever, had or done in the premisses or any of them in the manner aforesaid by the said married or bigamous clerks or laymen, be null and void in law. And let the said married, bigamous clerks or laymen that thrust themselves into the aforesaid [offices] or any of them, contrary to the prohibition of the present council, incur the sentence of the greater excommunication *ipso facto*.

[b] A married clerk was in all respects reputed as a layman, saving that if he kept his habit and tonsure, he could be convened according to the canon law before no secular judge; and if any one laid violent hands on him, he was excommunicated *ipso facto*, and none could absolve him but the pope.

[c] Not only the clerk who had successively married two wives and laid with them, but he who had married a widow, or one betrothed to another, or divorced by a former husband, or dismissed on account of affinity or consanguinity, or that was corrupted by another before marriage, or who lay with his own adulterous wife, was interpretatively a bigamous by the canon law. But this law does expressly allow a dispensation to be granted to him, that being a priest had successively had two concubines: for this is only simple fornication, and no irregularity is thereby incurred, so says Innocent III. in his decretal A.D. 1213; *Decretal.* Greg. IX., lib. i. tit. 21. c. 6. God deliver us from such laws.

[d] It is evident that popish prelates did introduce this practice of granting ecclesiastical jurisdiction to laymen. They had many decrees and canons against it, but to no purpose, especially because the pope was allowed to have the power of dispensing in this. Gregory I. commissioned his subdeacon to exercise all manner of ecclesiastical jurisdiction. Many abbots who in virtue of their places had ecclesiastical jurisdiction, were not in orders, however not priests or deacons. Archdeacons, though they were not priests, yet were acknowledged to have the power of excommunication, if it had been exercised by their predecessors. Our reformers thought that if laymen were capable of this jurisdiction by virtue of a pope's dispensation, they were capable of it without any such dispensation; for the pope's will could not alter the nature of things: so this de-

viation from primitive order was established, but the occasion of all, was the bishop's grasping a civil jurisdiction together with his temporal: and when he found he was not sufficient for both, delegating them to others.

[e] The judge proceeds *ex officio*, when he cites any one without any instance or demand made by others.

[f] *Bigamus* comes after *laicus*, both in Lyndwood's present text and in the Oxford copy, by an evident mistake of the transcribers.

## A.D. MCCCCXVI.

### PREFACE. ARCHBISHOP CHICHLEY'S CONSTITUTIONS.

This year Archbishop Chichley held a convocation in London, as he did also the year foregoing. But it is foreign to my design to give my reader the account of his choosing according to ancient custom four bishops as representatives for the council of Constance in the former, and of his constitution in favour of the graduates of the universities in the latter: much less will the reader expect from me the history of the universities defeating this design of the archbishop in preferring men according to their academical degrees, on account of the discouragement it gave to those that were the majority, that is, the inferior graduates, by reserving the best benefices that were in the gift of ecclesiastics to those that were doctors in some one of the three faculties. Nay I shall omit his constitution made in this same convocation for the regulating the probate of wills and administrations, as not so agreeable to my present scheme, though I have indeed inserted such constitutions, when I found them intermixed with other properly ecclesiastical constitutions. But this archbishop made a new precedent in this respect: for he issued two mandates for the publishing these two constitutions severally; though both mandates bore the same date, and I wish ecclesiastical and civil matters had always been kept at a greater distance from each other. But the following constitution against heresy challenges its proper place in this collection.

## A.D. MCCCCXVI.

### ARCHBISHOP CHICHLEY'S CONSTITUTIONS.

LATIN. Sir H. Spelman, vol. ii. p. 672. [Wilkins, vol. iii. p. 378*.]

1. HENRY, &c., to our venerable brother Richard, by the grace of God bishop of London, health, &c. We remember that the constitution underwritten was made by us in the last convocation, of late celebrated in the church of St. Paul's, London, with the consent of us and our brethren, and the clergy of our province. Whereas the taking of heretics, who like foxes sculk in the Lord's vineyard, ought to be our principal care, that the dust of negligence may be shaken off clean from the feet of ourselves and our brethren: we ordain in this convocation of the prelates and clergy, that every one of our suffragan brethren, and of the archdeacons of our province of Canterbury, do by themselves, or their officials and commissaries, diligently make enquiry in their several jurisdictions in every rural deanery twice at least every year, after persons suspected of heresy, and cause [a]three or more men of good report in every deanery and parish in which heretics are said to dwell, to swear on God's holy Gospels, that if they know any heretics who keep private conventicles, or differ in their life and manners from the generality of the faithful, or who maintain heresies or errors, or have suspected books written in the vulgar English tongue, or that entertain persons suspected of heresies or errors, or that favour such, to dwell or converse, or resort in or to such places, they will inform against and discover in writing, so soon as conveniently they can, those persons with all such circumstances upon which they are suspected, to our said suffragans, archdeacons, or their commissaries. And let those archdeacons, and every commissary secretly transmit under their seals the names of the persons so informed against, with the circumstances, to the diocesans

* ["*Constitutio dom. Henrici Chicheley, Cantuar. Archiepiscopi, contra hæreticos, edita* 1 *Julii, A.D.* MCCCCXVI. Ex reg. Chicheley, vol. ii. fol. 5. a."]

of the places. And let those diocesans make lawful process against them with effect; and decree, define, and execute effectually as the nature of the thing requires. And if any persons be convicted, whom they do not deliver to the secular court[b], let them in good earnest commit them to perpetual, or temporary imprisonment (as the nature of the thing shall require) at least till the next convocation of the prelates and clergy of the province of Canterbury, and cause them so to be kept, according as the law requires. And let them take care to certify us and our successors in the next convocation of the prelates and clergy, in public form, distinctly and plainly concerning all and singular the points aforesaid, viz., what enquiries they have made, what discoveries, how they managed the process, and imprisoned the convicts, concerning the diligence or negligence of the archdeacons and commissaries aforesaid, and all and singular the circumstances concerning the premisses, and especially of the abjurations, if it happen that any in the mean time do abjure their heresies: and let them deliver the said processes effectually to the [c]official of our court of Canterbury, to remain in his custody, or in the registry of our court of Canterbury, in such a manner that every one concerned farther to prosecute such processes may have effectual recourse to the said official. We therefore command you, that you cause the aforesaid constitution to be published at proper places and times throughout your city and diocese, that you observe the same in all respects, and cause it so to be observed by others. Farther do ye command all and singular our brethren and suffragans, that they cause it to be published throughout their cities and dioceses; that they observe, and cause it effectually to be observed by others in like manner. And do ye duly certify us by your letters patent signed with your seal, and containing a copy of these presents, of what ye have done in the premisses before the feast of [d]St. Peter *ad vincula* next coming. Dated in our Inn at London, on the first day of July in the year of our Lord 1416, and of our translation the third. Sir H. Spelman, vol. ii. p. 673.

[a] From the time that the repairs of the churches and the ornaments thereof were laid as a charge on the parishioners, and this charge was de-

frayed in part by the bequests of devout people, in part by assessments or levies, it was absolutely necessary that there should be settled officers or certain men assigned to take care of those reparations and ornaments, and to receive such bequests and levy such sums as were necessary for these purposes. As we are sure that Church assessments were made in the beginning of the fourteenth century, (for which see Walter Reynold's sixth constitution, 1322,) so we may be certain, that from that time forward these officers were often obliged to make presentments of such as made default in paying their Church rates; and were, by other matters incident to their office, more directly under the inspection of the ecclesiastical court than other parishioners. And when the zeal of the prelates against Lollardy prompted them to make more frequent and strict enquiry into the behaviour of the people than formerly, they thought it necessary not only to charge a certain number of men upon oath, as they had formerly done in their synods and chapters, to discover such past scandals and offences as they knew, but to have two or three in every parish sworn to make discoveries of this sort for the time to come: but it is evident that it was not a fixed rule that the churchwardens should perform this office of giving information when this constitution was made; yet it is reasonable to suppose that the churchwardens were generally the settled presenters, though these offices were not yet perfectly united. And some short time before the Reformation they gradually became the same officers. They did from their first beginning present, sometimes by themselves alone, sometimes with other credible men joined with them, whom we call side-men, or assistants. Of old churchwardens gave up their accounts on All-Souls' day, but since the Reformation at Easter.

[b] In order to be burnt. See the stat. of the second Henry IV.*

[c] Who is also dean of the arches, for these words are not meant of any court holden at Canterbury, but the court of arches, as it is now called, which has been fixed to London ever since the time of Robert Winchelsey, archbishop. Lyndwood the glossator was himself this official at the time of the making this constitution.

[d] This feast was always called by the English Lammas, by our Saxon ancestors Þlaf-mæſſe: the present name is only a corruption of this old one; and it was so called from the custom of offering a loaf made of the new wheat of the present harvest in the church on this day. I know it is said that a lamb was offered on this day in the cathedral of York, which is dedicated to St. Peter. But I must have leave to suppose that this custom grew up there after the English had forgotten the language of their ancestors, and were misguided by the present sound of the word. Durandus and others, call it *Gula Petri*. If this had been the name of it in this island only, I should have supposed that it was so called, q. d. the yule or feast of Peter: but it went by this title in the current Latin of the eleventh and twelfth century: and the legend of the day tells us the occasion of it, viz., that Balbina was cured of a disease in her throat, by kissing the chain in which St. Peter had been bound at Rome; and that

* [2 Hen. IV. c. 15, A.D. 1400-1. Statutes of the Realm, ed. 1810, vol. ii. p. 125-8.]

Alexander the pope, by whose direction she used this remedy, did thereupon institute this holyday. This makes the feast to have been instituted before the middle of the second century; and is therefore utterly incredible.

2. Henry by divine permission archbishop of Canterbury, primate of all England and legate of the apostolical see, to our beloved Son in Christ the vicar general of the spiritualities of our venerable brother, lord Richard bishop of London, who is in remote parts, health, grace and benediction. The sacred name of the English Church (whom all the world extols beyond the Churches of other countries and provinces for her devout veneration of God and His saints) deserves to abound and exult in praises and cheerful devotion toward them by whose patronage and miracles she gladly feels herself to flourish, and by whose pious intercessions the public interest not only of the Church, but of the whole kingdom is strenuously maintained by righteous governors in the sweet repose of peace, and with wished victory over the enemies that make opposition from without. For though decreed to give help to this Church of His, and the kingdom of England's inhabitants on the account of the merits of divers saints, with which she gloriously shines; yet He has of late more miraculously comforted them, as we sincerely trust, by the special prayers of the almificous confessor and pontiff, His most blessed [e] John of Beverly [in behalf of] the said Church, together with the great men of the kingdom, and all its inhabitants and members. Oh the ineffable consolation of these our times especially, refreshing and memorable to all ages! that is, the gracious victory of the most Christian prince Henry the Fifth, king of England, and his army in the battle lately fought at Agincourt, in the county of Picardy, which was granted to the English by the immense mercy of God, to the praise of His name, and the honour of the kingdom of England, on the feast of the [f]translation of the said saint. In which feast, during the engagement of our countrymen with the French (as we and our brethren heard in the last convocation, from the [g]true report of many, and especially of the inhabitants of the said country) holy oil flowed by drops like sweat out of his tomb,

[Lynd., p. 103. Sir H. Spelman, vol. ii. p. 673. Lynd. app., p. 70. Wilkins, vol. iii. p. 379*.]

* ["*Statutum domini Henrici Chicheley, Cantuar. Archiepiscopi, pro festo S. Johannis Beverlaci celebrando.* Ex reg. H. Chicheley, fol. 8. 6."]

as an indication of the divine mercy toward his people, without doubt through the merits of the said most holy man. Desiring therefore to dilate the worship of God in our province, especially for the elevating the praise of so great a patron: we do, with the will, advice, and consent of our brethren and clergy in the said convocation, as also at the [h] special instance of our said most Christian prince, think fit that the memory of the said most holy confessor be every where throughout our province exalted with votive and devout affections; and do ordain with the advice and consent of our brethren and clergy, that the feast of the [i] deposition of the said saint, which is known to fall on the seventh day of May, that is, on the morrow of [k] John Port Latin, he celebrated for the future every where within our province, in the manner of a [l] feast of one confessor and pontiff [m] falling after Easter, with the regimen of the choir, according to the use of the church of Sarum, for ever. Farther, because on the feast of the translation of the said saint, which yearly happens on the twenty-fifth day of October, the service for St. Crispin and Crispinian uses of old to be observed and celebrated in all churches of our province, according to the [n] use of the church of Sarum, lest the introduction of one feast should prove the diminution of another, and that the said martyrs also (on whose day, and by whose merits the Lord from on high had decreed to look down on the English nation with so gracious a regard) be at the same time equally honoured together with the almificous confessor, we enact, decree, and ordain that every year for the future, the said twenty-fifth day of October, in memory of so notable a deed, be every where throughout our province celebrated with nine lessons, the three first whereof shall be the proper lessons for Saints Crispin and Crispinian, the three middle ones for the translation of St. John aforesaid; and the three last out of the [o] exposition of the gospel for several martyrs, with the service accustomed in such cases, according to the use of Sarum. Our will therefore is, and we firmly command and enjoin you duly to publish our said statute and ordinance throughout the city and diocese of London, and cause the said feasts yearly to be celebrated for the future: and command all and singular our brethren and suffragans (whom we also command by the tenor of these presents) that they

do celebrate the said feasts in manner aforesaid, and cause them to be so celebrated for the future throughout their cities and dioceses. And do ye certify us by your letters patent containing a copy of these presents, signed with the seal of your office, of what you have done in the premisses before the feast of the Purification of the blessed Virgin Mary next to come. Dated in our manor of Otteford under our seal *ad causas,* on the seventeenth day of December, in the year of our Lord 1416, and of our translation the third.

[e] This was an old English Saxon saint, of whom Bede relates several miracles, lib. v. c. 2—6. He was thirty-three years bishop of Hagulstade and York, the last but one of the eight who were mere diocesans of that city, and had no pall. He mightily affected the monastic life, and before his death, retired to his old cell at Depa-pube, since called Beverley, where he died A.D. 721, but was buried at York.

[f] The day on which his body was removed from his grave at York to his monastery at Beverley, in compliance with pretended revelations.

[g] It is not to be wondered that the northern people were forward witnesses in a point which was like to turn to so good account. They knew how good a market the monks and people of Canterbury had made of Becket's bones; and they were willing to have a saint of their own product to stop this people from carrying their richest oblations so far southward, and to invite men from all parts of the nation to pay their devotion at Beverley. But it was no great honour to the English nation to suppose that they could not beat the French without a kind of miracle.

[h] This plainly shews that kings before the Reformation did not order holydays to be kept by their own authority: and that the convocation did not undertake to compile a new office on account of the victory, but to order the use of those before made.

[i] Death.

[k] *Joannes ante portam Latinam* was on the sixth day of May, on which day St. John's deliverance from the caldron of burning oil, into which Domitian had cast him, was celebrated.

[l] There are in the Breviary, *Commune unius pontificis et confessoris, Commune duorum confessorum, &c.*

[m] On every day between Low-Sunday and Ascension-Eve, a memory of the resurrection was to be added to the service of the day, excepting on the invention of the cross, May 3.

The reader will observe, that the authority of convocation was thought necessary to order the new method of observing an old holyday of a saint formerly canonized, when the observation was intended to oblige the whole province. Lyndwood says these words, "with the consent of our brethren and clergy," were not only proper, but necessary*.

[n] This is contrary to the canon law, which directs the service of the whole province to be according to the metropolitan church, Distinct. 12.

* [Provinciale, p. 104, gl. *Fratrum nostrorum consilio.*]

But this was set aside by the long custom of this province, all of which almost followed the use of Sarum: for the bishop of Sarum is precentor in the college of bishops. And when the archbishop of Canterbury celebrated mass in his college of bishops, he of Sarum had the regimen of the choir by ancient custom. Lyndwood*. Some say that Osmund, bishop of Salisbury, drew up a liturgy for this province; but this is a palpable mistake, Gregory the First's sacramentary and antiphonary prevailed here from the time of the conversion of the nation by Augustine, and was in the eighth century received by the whole Western Church. But by the eleventh century there were great variations in it by means of the neglects, mistakes, defalcations, and additions of transcribers. The popes took no care to reduce the several churches and copies to an uniformity; and indeed, it was scarce practicable to do it, while so many copies were necessary to this end, as there were altars or chancels in the Western Church, while there were so few correct writers, and before the invention of printing. Osmund, bishop of Sarum, (says Higden, A.D. 1077†,) drew up an ordinal, which was received by almost all England, Ireland, and Wales. This ordinal was a book, by which all the differences of the books were reduced to one certain form, both as to the text and rubrics, and what was before doubtful was ascertained; but this use of Osmund was very much altered before the Reformation. If our present liturgy (though not to be compared to the Romish books in bulk) had all the uncertainties adjusted, and the defects in rubrics supplied, and the directions for choral service inserted by any one bishop for his own diocese, this might as well be called a new liturgy, as this ordinal of Osmund has been so called by some.

° In the office *Commune plurimorum martyrum*, part of the sixth of St. Luke is read, and presently follows the gloss of Bede upon it.

[Wilkins, vol. iii. p. 402.]

In the year 1421 Archbishop Chichley reinforced the constitution of Archbishop Sudbury, made 1378, concerning the salaries of stipendiary priests: the mandate for publishing it is extant. Sir H. Spelman, vol. ii. p. 678[p].

[p] Here Lyndwood leaves us, for he ended his work on Whitsun-eve, 1430, as he himself tells us in the last page of his gloss.

* [Provinciale, p. 104, gl. *Usum Sarum ecclesiæ.*]

† ["Ranulphus in Polychronicon, lib. 7. c. 3." quoted by Du Cange in his Glossary, art. Ordinale, but Ranulph Higden, who lived A.D. 1300—1363, and other chroniclers, copy the statement from John Brompton, who flourished A.D. 1198:

Anno autem ultimo supradicto (A.D. 1076), Hermannus primus episcopus Saresberiæ obiit. Cui successit Osmundus regis Cancellarius xxiv. annis sedens. Hic ecclesiam novam apud Saresberiam ædificavit, et clericos insignes tam literis quam cantu aggregavit, ita ut ipse episcopus libros scribere, illuminare et ligare non fastidiret. Hic composuit librum ordinalem ecclesiastici officii quem Consuetudinarium vocant, quo fere tota nunc Anglia, Wallia, et Hibernia utitur. J. Bromton, p. 976-7, inter X. Script. ed. Twysden. The passage is copied in Henr. de Knyghton de eventibus Angliæ, lib. ii. c. 3, ibid., p. 2351. Compare Du Cange, Glossarium, art. Consuetudinarius.]

## A.D. MCCCCXXX.

### ARCHBISHOP CHICHLEY'S CONSTITUTION AGAINST THE AUNCEL WEIGHT.

A CONSTITUTION made by the venerable father in Christ, the lord Henry Chichley, archbishop of Canterbury, in the convocation of the prelates and clergy of the province of Canterbury, begun in the cathedral church of St. Paul's, London, Feb. 20, A.D. 1430, for abolishing the weight called auncel weight. [LATIN. Sir H. Spelman, vol. ii. p. 687. [Lynd. app., p. 73. Wilkins, vol. iii. p. 516*.]

The wickedness of the declining world waxing wanton in an hideous manner against the constitutions and admonitions of the ancients, is violently carried to what is forbidden; insomuch that unless the rigour of discipline did by the diligence of pastors restrain those whom the fear of God does not reclaim from evil, 'they would through a presumption of impunity, and in contempt of the laws of God and man, run down the precipice of vice†. Public fame and certain experience assure us, that there are many trickish chapmen in some cities, boroughs, and other places of our province, who without regard to their salvation, use to buy of simple folk and others, wool, flax, honey, and wax, and other necessaries by a greater measure and greater weight commonly called *le auncell, otherwise scheft, or pounder, in a fraudulent manner; and to sell to the same‡ and others iron, steel, pitch, and rosin, and other commodities by lesser measure and weights called aboyr de poys, otherwise lyggyng wygtys, to the great hazard of their souls, and the robbing of the poor, and such simple folk, and the intolerable injury of others

* ["Ex reg. Chicheley, p. ii. fol. 83. a."]

† [per impunitatis audaciam calcatis legum habenis, tam Dei, quam hominum in omnia latentia excurrerent præcipitia vitiorum. W.]

‡ [eisdem simplicibus, S. W.]

who do not observe that the said auncel weight is [so] vulgarly called on account of some hidden falsities and frauds therein used. It is not only forbidden by the divine law, which says "that a false balance is abomination with God*," but also by the canonical constitutions of the fathers in general, and by royal statutes also under the pains of forfeiting of all that has been [b]purchased by that weight, and of imprisonment for [c]two years, it is by name and specially forbidden: nor do they fear the sentence of excommunication solemnly fulminated by all the archbishops and bishops of England, and often confirmed by the apostolical see (as is said expressly in the constitutions provincial of [d]John Peckham of good memory) against all and singular who transgress the great charter of the liberties of England, or any article thereof in word, deed, or advice: in which [e]charter it is said among other things, that there is to be but one measure and one weight throughout the kingdom. Nay what is more to be lamented, such crafty chapmen to multiply their errors, while they endeavour not to be publicly convicted, either by right or wrong, of the notorious abuse of the said prohibited auncel weight, do twice, thrice, or oftener in the year damnably incur the horrid crime of perjury, and execrably lead their complices into it, viz., when they are judicially onerated by an oath made by laying their hands on holy things to tell the whole truth by the officers of our lord the king, the justices of the peace, clerks of the market, confiscators, escheators, and others, concerning their using, or rather abusing the said weight, when they make special enquiry in every of their sessions; yet they do knowingly and wilfully conceal it, and cause it to be concealed by others bound with a like oath in the sessions of such judges and officers of the king, or other courts of temporal lords, by their threats and terrors. And all these men involved in so many and great crimes, but making no account of them under pretence of a rooted custom, do impudently intrude upon the sacraments of the Church without any intention of making satisfaction for what they have gotten by these evil means, or of leaving

[Prov. xi. 1.]

* [Johnson *omits* et alibi, "Non habebitis in sacculo diversa pondera, majus et minus; nec erit in domo tua modius major et minor; pondus habebitis justum et verum, etc." W. Cf. Deut. xxvi. 13.]

such their sins, to the grievous hazard of their own souls, and the pernicious example of others. And though we have several times sufficiently and legally admonished all and singular the transgressors to desist from the said crimes, and caused them to be admonished by our suffragans in the spirit of lenity under pain of the greater excommunication; yet few have hitherto minded to obey; and many, [e]nay, to our grief, almost all, blinded with covetousness, [f]do obstinately with hardened minds neglect to decline from the roads of their old sins*. Therefore that we may not seem to pass by such notorious enormous excesses of our sons with connivance, so that their blood should be required at our hands, (which God forbid,) desiring to consult the health of souls by a fit remedy against the premisses, supported with the authority of our last provincial council, we enact, ordain, and will that all and singular our subjects of the province of Canterbury, that shall after the publication of these presents knowingly use, or cause to be used, any weight notably differing from the king's standard, especially the weight vulgarly called auncel, scheft, or pounder, or any of them, or knowingly, obstinately, and rashly keep it by them in a clancular manner, do *ipso facto* incur the sentence of the greater excommunication: and we do specially reserve the absolution of them to the ordinaries of the places or their penitentiaries duly empowered in this behalf. Farther, that the crimes of these transgressors may be the more avoided by the solemnity of the denunciation, we charge, with the approbation of the said provincial council, that all and singular the said transgressors be publicly in general denounced excommunicate in every cathedral, and parish church, and chapel (in which divine offices are celebrated, as in churches) of our province aforesaid [g]four times in the year among the other articles of the greater excommunication, with an intimation that the absolution of them is reserved as aforesaid.

[a] This seems plainly to be a French name, and by what follows it appears that the constitutors thought the name to imply something of deceit; therefore our etymologists have not hit the mark; and I am not

[e]* [imo, quod dolenter referimus, pene omnes avaritiæ cæcitate perculsi, dum sitientes quæstum, prorsus non considerant dispendia animarum, a viis veteris malitiæ contumaciter ac induratis animos negligunt declinare, W.]

well enough skilled in the French tongue to offer at a new etymology*. Lyndwood would have said nothing to this constitution if it had come within the date of his work, for he professedly omits temporal constitutions, excepting the *articuli cleri*.

[b] Lat., *optorum*, but it should be *emptorum* or *obtentorum :* see stat. 13 Rich. II. c. 9†. Sir H. Spelman's copy is full of errata throughout.

[c] It is but six months by the statute last named, and till they make fine to the king by stat. 14 Edw. III. c. 12‡, one year by stat. 27 Edw. III. c. 10§.

[d] See const. of Peckham 3, A.D. 1279.

[e] See Magna Charta, art. 25¶.

[f] The words omitted are, *dum sitientes quæstum prorsus non desiderant.*

[g] Lat., *Quatinus in anno* 1. I read *quater in anno*||, according to the third constitution of Peckham just before cited. But this archbishop afterwards reduced it to three times a year, as you will see by his next constitution.

* [The name 'auncel' seems clearly to be a Norman form derived from the compound Anglo-Saxon verb 'handrÿllan' to give or sell with the hand, to which may also be traced the English word 'handsel.' The instrument used is described as a beam or shaft, with scales or hooks at each end, which being raised on the fore-finger or hand served to shew the equality or difference of the weight and the thing weighed. See Phillip's Eng. Dict., Auncel-weigt. Somner, Dict. Sax., Þandrÿllan.]

† [Johnson seems to refer to 13 Rich. II. stat. i. c. 9, the first part of which orders one measure and one weight throughout the realm, except in Lancashire; but the penalties there mentioned are imprisonment for half a year, and recompence to the party grieved to the double of his loss. Statutes of the realm, ed. 1810, vol. ii. p. 63.

Auncel weight was abolished 25 Edw. III. stat. 5. c. 9, ibid., vol. i. p. 321. See also 34 Edw. III. c. 5, ibid., vol. i. p. 365.]

‡ [ibid., p. 285.]

§ [ibid., p. 337. The penalties are there set down in these words, "and that he which doth against the same, to the damage of the seller, shall forfeit to us the value of the merchandise so weighed and measured; and the party that will complain him, shall have the quatreble of that which he shall be indamaged; and the trespasser shall have one year's imprisonment, and be ransomed at the king's will."]

¶ [ibid., pp. 24, 117.]

|| [So Wilkins.]

## A.D. MCCCCXXXIV.

### ARCHBISHOP CHICHLEY'S SENTENCES OF EXCOMMUNICATION.

HENRY, by divine permission archbishop of Canterbury, primate of all England, legate of the apostolical see, to our venerable brother Robert, by the grace of God bishop of London, or to his vicar-general of the spiritualities (he himself being in parts remote) health, and a continual increase of sincere love. It was lately set forth, and grievously complained of by the clergy of our province of Canterbury, in our provincial council celebrated in the cathedral church of St. Paul's, on the morrow of St. Faith the Virgin, the seventh day of October last, before us, our brethren, and fellow-bishops, that though it had been providently ordained of old by our predecessors, and particularly by John Peckham of famous memory in the provincial council of Reading, that those cases and articles in which the sentence of the greater excommunication is *ipso facto* passed by the provincial constitution, ought publicly to be declared in the vulgar tongue in every parish church of our province on days appointed for this purpose; yet that this wholesome observance of publishing and declaring these cases is long since grown into disuse and wholly forgotten or neglected, by means whereof many fall into such sentences while they are ignorant of it: therefore we were very earnestly requested on the behalf of the clergy aforesaid, that we would decree these cases and articles solemnly to be published and declared on some convenient days in every church of our province, by authority of the said council. We therefore being disposed to favour the petitions of the said clergy, as just and reasonable, decreed with consent of you and other our brethren, fellow bishops and suffragans assembled together, that the said cases and articles which were then read in full council, and ratified by all, be publicly declared at least on three Lord's days in the year, that is, on the first Lord's day in Lent, the first Lord's

LATIN. Oxford copy, p. 73 *.

* [The above passage, translated by Johnson from the appendix to Lyndwood's Provinciale, Oxon. 1679, "ex MS. Ætonensi," differs throughout from that which precedes the articles of excommunication in Wilkins, vol. iii. p. 523, "ex reg. Chicheley;" the latter is given in the appendix to this volume, A.D. 1434.]

day after Trinity, and the first Lord's day in Advent, through all the cathedral and parish churches of our said province, fully, perfectly, and distinctly, at high mass, when the greatest number of people are present in the said churches. We therefore charge it upon, and command you our brother, by the tenor of these presents, and enjoin you in virtue of holy obedience, that ye duly publish or cause to be published these our letters, with the said cases and articles which we have annexed to these presents, in your cathedral church and in every parochial church throughout your city and diocese, by our authority on every Lord's day aforesaid; or if it cannot be done on any of those Lord's days by reason of any lawful impediment, then on the Lord's day next following at least, in manner before mentioned; and take care to transmit them to every our fellow bishop and suffragan, by your letters containing a copy of these presents and of the said articles, with all expedition: and firmly enjoin them that they cause them publicly, clearly, and distinctly to be read and declared in the vulgar tongue at high mass, in every cathedral and parochial church of their cities and dioceses, every year on the three Lord's days aforesaid at least, if there be no lawful impediment; or otherwise on the Lord's day on which it may be conveniently done next following. And do ye certify us of what ye have done in the premisses in a distinct manner, by your letters containing a copy of these, before the feast of Pentecost next to come: and command every of our brethren aforesaid that they do not neglect to certify us in like manner by their letters before the feast of St. Michael next following. Dated in our manor of Maidstone, the 23rd day of February, in the year of our Lord 1434, and of our translation the twenty-first.

[Lynd. app., p. 73. Wilkins, vol. iii. p. 524*.]

Here follows the form of publishing the articles of the sentence of excommunication in the vulgar tongue.

[a] [F]yrste yeí be accursyd that presume to take away or pryse any chirche of the right yat longyth yereto, or else

* [Ex reg. Chicheley, p. ii. fol. 99. seq. Wilkins's text from this source is given below, and Johnson's text has been corrected by Lynd., app. p. 73, "ex MS. Ætonensi:"

First. Alle they ar accursed, that presume to take awey, or to pryve any churche of the right that longeth therto,

agayne ryght to stroy, breke or strobyll the libertes of the Chirche. And also yoo that parcheses any maner of letterys from any temporal courte, to lette any processe of spirítual juggys in such causes as longyth to spirítual court: and all yoo yat with puple and noyse come to spirítual courte, and put the juggys or parties yat there pletts in feer, or else for als moche as the partyes sew in spirítual court such causes as longyth to spirítual courte, make or procure any of the said partyes, advocats, procurators or other mynysteres of spirítual courte to be endítt or restyt, or any wise be bexyd. Also yei yat presume to dístroy or trobyll the ease and tranquíllite of the kynge and hys reame of Ynglonde, and yoo yat wrangfully withehold any ryght yat longythe to the kynge. Also all yoo yat wetyngly berys fals wittnes, or procure fals wittnes to be born, or else wetingly bring forthe in jugment fals witnes to let ryht matrimonie, or procure dysherytynge of any person. Also all yoo yat of malice put any crime of sklandyr to any man or woman, the whiche was not sklanderyt byfore amonge gude men, and worthy, so that he or sche shulde be caulyde to jugment, a purgacion assigned to hyme on the said crime, or grebyd in any other wise: and also yoo yat resybe the kyngs writtys, or mandements to take such as ben acursyde for nede, or fabour, or any other wilefull causys yei do nott dew execucion thereof, and yoo yat letts such execucion, or procure wrongefull delyberaunce of such yat ben acursyde. And all yoo yat take

or elles ageyn right stryve to breke or trouble the libertees of the Churche. And also they that purchace any maner letres fro any temporal court, to lette any processe of spirituel juges in suche causes, as longeth unto spiritnel court. And all they that with peple and noyse come to spirituel courts and putte the juges, or the parties, that there plede, in feere; or elles, forasmuche as the parties serve in spirituel court suche causes as long unto spirituel court, make or procure any of the said parties here advocates, procuratours, or other ministres of spiritnel court to be endited, arrested, or any other wyse to be vexed.

Also, all they that presume to distourbe or trouble the peece and tranquillite of the kyng and his reaume of England; and they that wronggefully withhold any right, that longeth to the kyng.

Also, alle that wetyngly bere false witnesse, and procure false witnesse to be borne; or elles wytingly bryng forth in jugement false wittenesse, to lette rightfull matrimony, or procure disherityng of any person.

Also, alle they that of malice putte any cryme or sclaunder to man or woman, the whiche was not sclaundered before amongg good men and worthy, so that the[1], he, or she, so desclaundered, be called unto jugement, and purgation assigned them on the said cryme, or greved any other wyse.

[1] [i.e. they.]

Also, alle they that receiveth the kyngges writtes or maundements to take suche as beth accursed, and for mede, or favour, or any other wilfull cause, doth not execution thereof;

wastynge or withedwralwynge owte of house, maners, grangs or odyr places of arshbyschopes, byschopes, or any other person of holy Chirche ayene their will, or ayene the will of suche persons yat ben ordeynt ande deputede kepers thereof. Also all yoo yat drawethe owte of seyntory any man or woman yat fleythe to chirche, or chirchezarde, or closyr, for gyrthe or immynyte of holy Chirche, or let or forbyde necessary lyfelode to be gyffynge to suche persons beyinge withe-inne seyntory. And yoo yat putt violent hondes on preste or on clerke. Also all yoo yat use any wycheraft, or gife thereto faith or credence, ande all fals jurowrs, and other yat be forsworne on boke, or off any other holy thing. And all yoo yat dothe symonye or sacrilege, heretickes, Lollars, and fawtowrs of yanie famose thefys, robbers, reffers, and rabyshers, falsarias of the poppys, or the kings, or off any ordinary of holy Chirche. And yei yat letten execution of trewe testaments or laste wills, and witheholders of tyth or any other spirituall commodytys yat longyth to holy Chirche. Amen.

[a] F is not in the Oxford copy. It was common for writers to leave out the first letter of any book, instrument, or chapter, in order to have it written in a more elegant manner, and embellished with pictures, or flourishes, by the hand of an illuminator; and many books remain im-

and they that lette such execution, or procure wrongfull deliveraunce of such, as beth accursed.

Also, alle they that taken away, wasten, or withdrawen any thyng outte of houses, maners, granges, or other places of archebishoppes, bishoppes, or any other person of holy Churche, agayne her wille, or agayne the wille of suche persones, as beth ordeyned and deputed kepers therof.

Also, alle they that drawe oute of sayntwarye any man or woman that fleeth to churche, churchyerde, or cloyster, for ȝmþ or immunitie of holy Churche, or lette or forbede necessary hflode to be geven to suche persones beyng withyn sayntwarye, and they that put violent handes on prest or clerk.

Also, alle they that use any wichecraft, or geve therto faieth, or credence; and alle false jurors, and other that ben forsworne on bok, or any other holy thing; willfull brenners of howses, userers, alle they that do symonye or sacrilege, heretikes, Lollardes, and fautours of hem; famous theves, and rubbers, and ravyshers; falsaries of the popes letres, the kynges letres, or letres of any ordinarye of holy churche; and alle counterfeitours of testamentes or last wylles. And they that lette execution of trewe testamentes or last willes; and withholders of tythes, or other spirituell commodytees, longyng to holy churche. And they that lette or procure to be lette tithes to be take, and ledde away by hym that the tithes be dewe to; or elles pleade, arrest, or vexe in any other wise such leders away of tithes, or procure hem to be arrested, pleeded, or in any other wise vexed for that cause.

Also, all they that use false weghtes or false mesures; and in especiall alle they that use a weght, that is called "auncell, schefte, or poundre," or holde or kepe that weght pryvely or openly.

Also felons, maynteners of felonyes, conspiratours, and takers or maynteners wetyngly false quereles, and chereshers of hem. Wilkins, vol. iii. p. 524. Respecting 'grith' *peace*, and 'liflode' *victuals*, see Johnson's canons, vol. i. p. 318, 320, A.D. 877, 1, 4; vol. ii. p. 197, 228, A.D. 1261, 8, and 1268, 12.]

perfect in this point, having never had the luck to be finished with such illuminations.

N.B. Several of these articles were retracted by Archbishop Peckham himself soon after they were first ordered to be published: yet it seems evident that these articles, notwithstanding Peckham's retractation, were always deemed to be in force; and indeed he himself two or three years after published them again though in other words, by authority of synod. It is clear Archbishop Chichley thought that retractation to be no just objection against them. And Lyndwood, principal official of this archbishop, and, which is more, the principal canonist that this nation ever produced, thought them to be in force: for he glosses on them without taking any notice of the retractation, p. 353, and sums up his constitution to the same purpose at Lambeth, 1281, and glosses on that abridgment of his own. It is farther observable, that though Chichley omit some of the Reading articles, yet none of those which were retracted.

[b] The reader will observe that they who use the auncel weight are not mentioned in this general excommunication*: yet they are said to be anathematized in a public excommunication still extant in the register of Bath, A.D. 1434.

* [Johnson's remark is true of the imperfect copy which he gives from Lynd. app., p. 73; but they who use the auncel weight are expressly mentioned in the last article but one of the copy in Wilkins, vol. iii. p. 24, quoted in the preceding note.]

## A.D. MCCCCXXXIX.

### ARCHBISHOP CHICHLEY'S CONSTITUTION FOR AUGMENTING VICARAGES.

LATIN. [Sir H. Spelman, vol. ii. p. 689. Lynd. app., p. 74. Wilkins, vol. iii. p. 535.]

THE constitution of Henry Chichley, archbishop of Canterbury, made in a provincial council begun the first day of November, in the year of our Lord 1439, in the eighteenth year of Henry VI. king of England and France, in which year Felix IV. alias V., was by the council of Basil substituted pope of Rome, in the stead of Eugenius IV., who was deposed.

Because it is provided by the common law (on account of the long continuance of suits, which by reason of the nice observance of the judiciary method, use to be burdensome to the parties, especially if poor) that in some cases proceedings may be without the noise and solemnity of judicature in a simple plain manner; and there are in our province of Canterbury many vicarages belonging to rich churches, yet so small as not to afford even a slender livelihood to their vicars, by reason of the unwonted lukewarmness of the [a]devotion of the people: yet if they commence suit before the ordinaries of the places for the augmentation of their portion, so many difficulties are raised against them through the indirect arts of exceptions and delays by the rectors or proprietors of those churches, that they are compelled to desist from their just prosecutions after they have begun, by reason of poverty and despair of carrying their cause; we ordain, with the provident deliberation of the present council, that in the case of augmentations of small vicarages (not much [b]unlike some of the aforesaid cases) proceedings may be summary and in a plain manner, without the noise and solemnity of judicature, if the plaintiff require it. We add, that ordinaries admit vicars (if they will affirm

upon oath that they are very poor) to prosecute their causes for the augmentations of their vicarages in *forma pauperum*, and do their office in this respect gratis and freely, and cause the advocates, proctors and other officers and scribes of their courts and consistories, to defend and act for them gratis, and let them take care to assign such portions to the said vicars as they see reasonable in proportion to the revenues of the church, and to the burdens which belong to the vicars; and that no less portion than that of twelve marks in the whole be assigned to any vicar, if the whole profit of that church, whose vicarage is to be augmented, do amount to that sum. And lest the ordinaries be any wise obstructed in the execution of their office, under pretence of the difficulty of citing such rectors and proprietors, who sometimes dwell out of the dioceses in which those vicarages, whose augmentations are disputed, lie; we ordain by authority of the said council, that in causes concerning such augmentations, the aforesaid rectors and proprietors be as strictly obliged to appear by virtue of citations publicly and solemnly made in the churches (whose rectors and proprietors live out of the diocese of the ordinary who orders such citation to be made) on some Lord's day or festival, while the greater, or a notable number of the people is present there, as if they had been personally served with the said citations*.

[a] In making offerings, which was originally a main branch of the vicar's subsistence. Wicklif's doctrine had well-nigh dried up this stream.

[b] The most usual summary causes are those relating to the probate of wills; and any poor heir-at-law may demand to have the will by which he is cut off proved with solemnity, that is, by the oaths of sufficient witnesses, and the executor is bound to bear the charge of the process, if the heir create no unnecessary delays: and this may be done though the executor have before proved the will in common form.

* [Johnson *omits*, in quibus citationibus ad comparendum ipsis citatis, ad minus dentur triginta dies, S. W.]

## A.D. MCCCCXLIV.

### PREFACE. ARCHBISHOP KEMP'S CONSTITUTIONS AT YORK.

This year John Kemp, archbishop of York, cardinal of St. Balbina, in a provincial synod at York made the following constitutions, or rather made one, and transcribed another from the constitutions of our province, and enacted both. We have them only as they are registered by Archbishop Nevil, at the end of his constitutions in the year 1466, after Kemp had been translated to the see of Canterbury, and had been dead twelve years. Archbishop Nevil's words here follow.

## A.D. MCCCCXLIV.

### ARCHBISHOP KEMP'S CONSTITUTIONS AT YORK.

LATIN. [Sir H. Spelman, vol. ii. p. 707. Wilkins, vol. iii. p. 604*.]

UPON examining the registries of John, late priest cardinal of the Church of Rome by the title of St. Balbina, and our predecessor of worthy memory, we remember that the underwritten constitutions were duly and lawfully made by him, yet not inserted or incorporated into the book of statutes. We will, therefore, that they be published and incorporated among the other constitutions, and firmly observed by all the subjects of our province.

1. The first is the fifth constitution of Archbishop Winchelsey, 1305, save that it has a preface put to it, in which I see nothing singular, or observable. Nor are the variations very considerable as to the body of the constitution. But instead of stipendiary priests, Archbishop Kemp calls them [a]chantry priests. He mentions not the punishment of the greater excommunication, in case they purloin the incumbent's dues, but obliges them to swear that they will not. The oath was to be taken by touching the Gospels: he adds, that these priests must read the lessons, epistles, and gospels, at high mass, at the assignment of the curates. After which are added some words which seem to me unintelligible. The method seems rather taken from the second constitution attributed to Mepham, Sir H. Spelman, p. 501. And there is the following addition in both, viz., that these priests, and such as are curates, spend their vacant hours at their books, and not at taverns, shews, stews, or unlawful, hurtful games.

[a] This name was most usual in the times just preceding the suppression of monasteries, and did especially denote such priests as had a settled

* [See below, A.D. 1466, p. 519, note *.]

estate, or salary for life, on condition of singing mass constantly at such an altar for the founder and family.

2. Being informed by unanimous report, and by experience, that some abbots, priors, (that have no proper abbots,) hospitallers, and other administrators of church goods, do sell and alienate the goods of such monasteries, priories, and other ecclesiastical places, (over which they preside, and to whose profit they should contribute,) and particularly the trees of their woodlands, ceduous or not ceduous, rents, possessions, and their other rights, to the desolation of the said ecclesiastical places: and do likewise sell or grant [b]corrodies, pensions, and liveries for life, or a long term: and do also let to farm churches appropriated to themselves and their monasteries; and do convert the ready money they receive to their own uses; and do bring themselves, their monasteries, and successors, and their rights, rents, and possessions, under engagements, and expose them to be distressed by secular men; and do give other goods without measure to their acquaintance and friends; by occasion whereof their monasteries, houses, and places thereunto belonging, are under great want of repair, and ready to fall, divine worship in such places is diminished, regular observances are neglected, and the goods of such places are wasted, and to our grief consumed; we, John, archbishop, earnestly desiring to provide for the indemnity of monasteries, priories, hospitals, and other religious places in the province of York, and to apply a seasonable remedy in these cases, do with the advice and counsel of our suffragans enact and ordain, with a saving to the provisions, statutes, constitutions, ordinances, and remedies concerning such sales, alienations, and grants that have been made by the authority of the ancient fathers, that when a sale of trees, woodlands, ceduous or not ceduous, in any great quantity, or the grant of rights, rents, possessions, pensions, corrodies, or liveries for the life of any person, or for a long term is to be made, a diligent and mature consultation of two days at least between the abbot and convent, or the prior (where there is no proper abbot) and the convent ought first to be had; and if upon such solemn consultation, it seem good to the abbot or prior, with his con-

vent, that such sales, alienations, grants of liveries, or taking up of money, be necessary, advantageous, or seasonable to their monasteries, priories, or other places; then let them consult concerning the alienations, sales, and grants aforesaid, with us in our own diocese, and with our suffragans in their dioceses, and with our and their successors in all times to come; and after licence and authority first had from us, or our suffragans in their [several] dioceses, let them have leave to make the said sales and grants. But if the abbots, priors, or hospitallers aforesaid, contrary to this our ordinance and provision, do make such sales, alienations, or grants, not having first authority, let such sales, alienations, and grants, whether for life, or perpetual, [c]be utterly null and void. And yet let the said abbots, priors, and hospitallers, who infringe, violate, or contemn this our constitution, be *ipso facto* suspended from celebration of divine offices, and administration of the goods of the monasteries, and from their dignity and office for ever; beside [d]other penalties in this case provided in divers ordinances.

[b] Corrodies, pensions, and liveries here have much the same signification, viz., a certain daily, weekly, monthly, or quarterly payment in victuals, clothing, or money. Corrody is still used for a place in a hospital, particularly in those about Canterbury. It has other significations in the law books.

[c] The prelates might spend their breath to no purpose on this account; for it is certain that such sales and alienations were good at common law, unless where the king was founder; but they were always forbidden and nulled by the canon law. During the times of popery, prelates being under the awe of canons did tolerably well preserve their estates; but when the canon law was once thrown out of doors, it is evident by too many instances, that the prelates would soon have reduced their dignities to a primitive poverty, if temporal statutes had not tied their hands.

[d] Excommunication was the punishment inflicted by the canon law, both on the grantor and grantee in this case. See *Decretal.*, lib. iii. tit. 13. N.B., there is in Sir H. Spelman a bull of Pope Paul II., bearing date 1467, which cancels all such alienations, infeodations, &c., and deprives the authors of them of their dignities, vol. ii. p. 709*. But we may certainly conclude that the alienations made about and after these times were justified by our temporal courts, and were the precedents by which King Henry the Eighth's agents proceeded, when they did with menaces and artificial practices prevail with heads of convents to surrender their estates to the crown.

* [Wilkins, vol. iii. p. 605.]

Wicklif's party being now silenced by the awe of temporal and ecclesiastical authority, and matters of discipline being firmly settled according to the Romish scheme, our archbishops and convocations had little of moment to do; but lest they should seem to meet for no purpose at all, they renew old provisions for keeping the feast of King Edward the Confessor *.

* [The above remarks, which Johnson made in ignorance of the real acts of the coronation at which Archbishop Stafford's letter respecting the feast of St. Edward, king and confessor, was promulged, will be seen to be fallacious by reference to Wilkins, vol. iii. p. 539—541. If Johnson had been acquainted with these interesting and important acts, he would doubtless have given them a place in this collection: they will be found in the appendix to this volume, A.D. 1444-5.]

## A.D. MCCCCXLV.

### ARCHBISHOP STAFFORD'S CONSTITUTION.

LATIN. [The Oxford Edition, p. 74. Wilkins, vol. iii. p. 540.]

THE constitution provincial of the lord John Stafford, archbishop of Canterbury, remarkable for his family and merits, for solemnly celebrating the feast of St. Edward, king and confessor, made in the year of our Lord 1445, Henry VI. reigning in England, Felix V. being pope of Rome, Eugenius IV. being deposed by the council of Basil *.

John, by divine permission archbishop of Canterbury, primate of all England, and legate of the apostolical see, to our venerable brother the lord Thomas, by the grace of God bishop of Ely, health and brotherly charity in the Lord. Though we are divinely admonished by the holy David, the man after God's own heart, "[a]to praise God in His saints," at whose intercession God confirms peace, takes away pestilence and famine, establishes kingdoms, and gives victories†, and very often by a miraculous power imparts health to desperate diseases; yet every Church is bound to venerate and extol with special praises, and with a prerogative of devotion, those saints with whose peculiar patronage and miracles she is illustrated; therefore, that the divine majesty may be more amply glorified in the saints in our holy mother the English Church, which‡ is irradiated by the prayers and frequent miracles of the most blessed Edward, confessor and king, and by whose merits histories say the kingdom of England

* [The above heading is only in the appendix to Lyndwood's Provinciale, Oxon. 1679; the following is the date and title in Wilkins of the document of which a similar letter to Robert, bishop of London, forms part:

"A.D. 1444. *Convocatio prælatorum et cleri provinciæ Cant. 19 die Octobris in ecclesia S. Pauli London.* Ex reg. Stafford, fol. 28, seq." See appendix to this volume, A.D. 1444-5.]

† [confertque victorias timentibus et diligentibus nomen suum. Lynd. app., p. 74. Wilkins, vol. iii. p. 540.]

‡ [Johnson *omits*, inter cæteros sanctos beatissimi Edwardi Confessoris et regis piis consonetur suffragiis, Lynd. app., p. 75. The other copy, Wilkins, vol. iii. p. 540, has the same except "confovetur" for consonetur.]

was formerly delivered from the cruelty of pagans; we, with the unanimous consent and advice of our brethren in our last convocation, and also at the repeated instances of our most devout and Christian king our supreme lord, (who doubts not but that his kingdom and royalty is defended by the intercession and patronage of this most glorious king and confessor,) have decreed, ordained and enacted, that the feast of the Translation of the said St. Edward be celebrated throughout our province of Canterbury every year in a solemn manner for the future*; and do ye cause it to be celebrated in the city and diocese, as well by clerks as laymen. And do ye certify us of what ye have done in the premisses, by your letters containing a copy of these signed with your seal, before the feast of All Saints next coming. Dated in our manor of Croydon, the first day of October, in the year of our Lord 1445, and of our translation the third†.

[a] Psalm cl. 1. *Sanctis* without a substantive was taken to signify the saints, but it seems better to understand *locis*‡.

* [Johnson following Lynd., app. (p. 75,) *omits*, sub duplici officio, W.]

† [The letter in Lynd. app., p. 25, which Johnson translates, is much shorter than that in Wilkins, vol. iii. p. 540-1.]

‡ [Laudate Dominum in sanctis ejus: laudate eum in firmamento virtutis ejus. Ps. cl. 1. Vulgate.]

## A.D. MCCCCXLVI.

### POPE EUGENE'S PRESENT TO KING HENRY VI.

For want of better memorials at this time, my reader will forgive me, if I for once present him with a most egregious trifle as ever yet came from Rome to England, not indeed at its full length, (for the Latin contains more than a page in folio, Sir H. Spelman, vol. ii. p. 690,) but so that every reader may say he has enough on it.

Eugenius bishop, servant of the servants of God, to our most dear son in Christ, Henry the illustrious king of England, health and apostolical benediction. The reasons of some most solemn ceremonies celebrated by the Roman pontiff, are too deep sometimes to be understood, not only by the vulgar, but by the moderately knowing. Being about to honour your highness with a famous present, we think it not unworth our while to say something by way of preface. Among many things which the Church does in the mystical way during Lent—on that Lord's day which is the seventh from Septuagesima—when the introit to the mass is, "Rejoice, O Jerusalem," &c.—when the faithful people are come to the middle of the lenten fast—the Roman pontiff, when he is going to church and returning from thence, carries in his hand in the sight of the people a golden rose; this rose the pontiff uses to give to some prince then in the court, whom he specially esteems for his nobility, power and merit. The prince, adorned with so great a present, and attended with a great retinue of cardinals and prelates, goes in pomp through the streets and lanes of the city, that no one may be hindered by sex, weakness or business, from partaking of this common joyful sight. We have presented four princes in our time with such a rose, two kings of the Romans, one of Castile, a fourth of Arragon, with an intention to excite and impel them against infidels that are enemies to Christ;

LATIN. [Spelman, vol. ii. p. 690. Wilkins, vol. iii. p. 551*.]

* ["*Eugenii IV. papæ literæ apostolicæ Henrico Sexto, Anglorum regi, missæ de rosa aurea.* Ex reg. Stafford., fol. 47. a."]

that if we could not move them by our words, we might do it by their religious regard for an apostolical present. Having lately considered these things, and the great faith and devotion of your serenity toward us and the Church of Rome, we thought it not only decent, but just, that you should be decorated with the same gift; because last year at our request you not only granted a supply of the tenths of your kingdom against the Turks, the enemies of Christ, but promised an auxiliary force of armed men. And we hope that this rose will more effectually dispose you to assist the Church of Rome against the barbarians, to your own perpetual glory.—Nor let any one think that this is an invention of ours on purpose to prevail with you, since it is a traditionary observance of the Roman pontiffs, that the king of the Romans (from whom the Church always expects due aid) be crowned on [a]no other day but the Lord's day aforesaid, and after such a rose presented to him. Therefore whereas we now send to that kingdom of yours, our beloved son, master Lodowick de Cardona, one who belongs to our bedchamber, as a messenger to demand the tenths imposed last year on account of the Turks; we do in the Lord exhort and require your serenity, that you do him all necessary favours to this purpose: and let your highness begin to consider of other aids to be granted us toward so great an expedition. Dated at St. Peter's, Rome, in the year of Incarnation 1446, eighth kal. of July, and of our pontificate the sixteenth.

[a] I read *nulla alia die* *, not *multa*, &c.

N.B. Pope Julius the second in the year 1510, sent to Archbishop Warham a golden rose tinged with holy chrism, perfumed with musk, blessed with his own hands, to be presented to King Henry VIII. by that archbishop at high mass, celebrated by the archbishop himself with certain ceremonies expressed in a schedule annexed to his letters†. King Henry VIII. was then a young prince, and might be pleased with such toys, but he afterwards learned to despise them and their donor.

* [So Wilkins.] † [Spelman, vol. ii. p. 725; Wilkins, vol. iii. p. 652.]

## A.D. MCCCCLIV.

### PREFACE. ARCHBISHOP BOURCHIER'S LETTER FOR PROCESSIONS.

We have before seen, in the year 1416, how the prelates before the Reformation made provision for their *festa repentina*, occasional thanksgivings, without composing new offices. And it is scarce to be conceived, that any occasion for such thanksgivings can happen, but that there is a competent provision already made for it by our liturgy. In the following letters of Archbishop Bourchier we may observe how they ordered matters in case of extraordinary humiliation; and particularly it deserves our notice, that they drew up no new offices, or prayers, but only required some old forms more frequently to be used: they did not think their authority sufficient absolutely to enjoin the use of these forms, but only granted indulgences to them who complied. The convocation indeed in the former case does peremptorily require all to use the old forms in a new manner, but the archbishop acting by himself, does not go so far. I cannot but think that our Church has made a better provision in this case: for every Friday is an established fast, and the commination service may be used, whenever the ordinary appoints: and this with the prayer on the occasion, whatever it be, which may be added out of the forms next after the litany, prescribed to be used before the two final prayers of the liturgy, would make a better office for a public fast, than I have ever yet seen in that great number that have been with so much parade distributed to every parish in the nation; every one of which offices cost the nation five hundred pounds at least in fees to the apparitors, beside the charge of the government in printing of them.

## A.D. MCCCCLIV.

### ARCHBISHOP BOURCHIER'S LETTER FOR PROCESSIONS.

LATIN. Sir H. Spelman, vol. ii. p. 691. [Wilkins, vol. iii. p. 572.]

THOMAS, by divine permission archbishop of Canterbury, primate of all England, legate of the apostolical see, to our venerable brother Thomas, by the grace of God bishop of London, health, and a continual increase of brotherly love. [Here I omit a whole page, which is only a prefatory narrative of the occasion of these letters, and which is sufficiently though briefly expressed in what follows.] That this our happy expedition against the [Turks] persecutors of our orthodox faith now begun, and the health and condition of the most Christian prince our lord the king, and of the common-weal of this kingdom may daily be improved, and the sooner brought to perfection, and those [a]internal evils may be happily composed by the inspiration of divine grace, we have decreed that certain solemn processions be for one year celebrated within our province of Canterbury in the cathedral, regular, collegiate, and other churches. Therefore we give it in charge, and command you our brother, that that ye do enjoin all and singular our brethren and fellow bishops, the suffragans of our church of Canterbury, in our stead, and by our authority, and with all speed by your letters containing a copy of these, that they do admonish and persuade, or cause to be admonished and persuaded, all their subjects both clerks and laics in their cathedral, conventual, and collegiate churches, (whether regular, or secular,) and also in the parish churches of their cities and dioceses on the Lord's days and festivals, that they celebrate processions in a most devout, affectionate and solemn manner, and sing or say the litanies with other suffrages that are seasonable and acceptable to God, as well on those Lord's days and festivals, as on every Wednesday and Friday, with

all humility of heart, for the driving away and removing far from the bounds of the Christian world the wicked powers of them that are enemies to the Christian orthodox faith, and its professors, and for the total extinguishing and (may God so please) the exterminating of them; and for the restoring and perfecting the welfare of our lord the king, and this famous kingdom of England, and for the daily increase and improvement of their prosperity; and for the averting and dispelling, removing and avoiding, with all possible speed, those difficulties and dangers now imminent on the king and kingdom, and those [b]evils from abroad with which we are beset and encompassed. And that they do farther exhort the people subject to them, that they do by day and night, at their convenient leisure, continue instant in their prayers with all humility of heart, for the averting these evils from us, and from the whole Christian world. And do ye, dear brother, cause the same to be done in your city and diocese by those who belong to you, in an humble devout manner on the like days, times and places. And that they may be excited to these works of devotion with the greater frequency and zeal, we, of the immense mercy of God, and confiding in the merits and prayers of the most blessed Virgin Mary, His mother, and of the blessed Peter and Paul, His apostles, and of Saints Alphege and Thomas, martyrs, our patrons, and of all the saints, do graciously grant forty days' [c]indulgence by these presents, to all and every one of our subjects who repents of his sins, and confesses them with contrition, and is present on any Wednesday or Friday within the said year at the making of such procession, as is aforesaid, and intercedes with devout prayers to God for the premisses, or that fasts on the days aforesaid, or on any day within the same year; or that says mass, or [the[1]] seven psalms [1 [Ed.]] with the litany, or a nocturnal of David's psalter, or the psalter of the blessed Virgin Mary, so called, [or] that goes in pilgrimage to any place, commonly resorted to for such purposes, or gives any thing in alms, out of reverence to God or His saints, and that duly confesses his sins in order to his offering these sacrifices in a more acceptable manner to God, for as often as they perform any of the premisses. And we request you, and your brethren, that ye grant such indul-

gences to your and their subjects doing as aforesaid, as are wont to be granted. Dated in our manor of Croydon on the nineteenth day of January in the year of our Lord 1454, and of our translation the first.

[a] The internal evils mentioned here, and below, were the commotions between the Yorkists and Lancastrians, which now began to break out with some violence.

[b] The evils from abroad were, I suppose, the invasions of the French, who had gained great part of the old English territories on the continent, and now were bringing a war to our own homes.

[c] These indulgences were one of the most stupid inventions that were ever set on foot by the court of Rome: and the inventors themselves could never explain the meaning of them: for they ever declared, that neither the pope nor Christ Jesus Himself did ever give hopes of reprobates being freed from hell torments. They tell us it was only a relaxation of the temporal punishment due for sin, and which is to be paid either by penance here, or in purgatory hereafter. And this might in some measure clear the matter as to the bishop's indulgence, which was but for thirty days at most, and as to the archbishop's, which was for fifty days at most. But when the pope by the pretended plenitude of power extended his indulgences to thousands of years, this can never be resolved into a relaxation of penance, unless it could be supposed that a man could sin or do penance for so many years. After all, their best casuists advise people to do their penance, notwithstanding these indulgences, which is to say, that they would have none to rely on them.

[Postscript.] We are not to wonder, that the archbishop in the case above did not ask the consent of his convocation: for he intended not that his letters should be a peremptory binding decree, but only an earnest admonition: and when in the year following he sent his monition to all rectors, vicars, curates, and their substitutes throughout his diocese and province, and particularly to all such as should minister the Word of God to the clergy and people at St. Paul's Cross, London, to advertise all people that testaments [should not be[1]] made, or matrimony contracted without two or three witnesses, and that one of the witnesses to the will be a parish priest, or the proper curate, if it may conveniently be, he had no occasion to take the advice of his convocation in this case, because what he required was no more than what the canon law demanded.

[1] [Ed.]

## A.D. MCCCCLXII.

### PROVINCE OF YORK RECEIVES THE PROVINCIALS OF CANTERBURY.

William Booth, lord archbishop of York, held a convocation in his cathedral church, in which the following constitution was made. See the present lord archbishop of Canterbury's State of the Church, p. 374*, &c., and the lord bishop of Rochester's Rights, &c., of an English convocation, p. 47†.

It is to be remembered that the prelates and clergy in convocation 1462, do unanimously will and grant that the effects of the provincial constitutions of the province of Canterbury had and observed before these times, being no wise repugnant or prejudicial to the constitutions of York, be admitted, but not otherwise, nor in any other manner: and that such constitutions of the province of Canterbury, and the effects thereof in manner aforesaid, be inserted among the constitutions of the province of York, and incorporated to be kept together with them for the future, and be observed for law, [a]as there is great occasion, and as decency requires.

Latin. [Wilkins, vol. iii. p. 663.]

[a] Lat., *Prout indiget, et decet.*

* ["The State of the Church and Clergy of England in their councils, synods, convocations, conventions, and other public assemblies, from the conversion of the Saxons, by William Wake," &c., p. 374-5. ed. Lond. 1703.]

† ["The rights, powers, and privileges of an English Convocation, by Francis Atterbury," &c., p. 47. ed. 2. Lond. 1701.]

## A.D. MCCCCLXIII.

### ARCHBISHOP BOURCHIER'S CONSTITUTIONS.

LATIN. Sir H. Spelman, vol. ii. p. 698. [Wilkins, vol. iii. p. 585*.]

THE constitutions of Thomas Bourchier, archbishop of Canterbury, primate of all England, legate of the apostolical see, made in the cathedral church of St. Paul's, London, the prelates and clergy of the province of Canterbury being then and there convocated, on the sixth day of July, 1463.

1. Although the disposal of all churches, and of the rights, persons, and things thereunto belonging, and also of the goods in pious places, is known by the testimony of the sacred canons to belong to the bishops, and holiness becomes God's house, and peaceableness (with due veneration of Him, by whose peace it was made a place of divine worship), that no disturbance of the minds of Christians, or execution of the secular law, be in the Church; yet the impudence, or rather rashness of some secular officers in the province of Canterbury, forgetful of their own salvation, is grown so abusive to the Church, that sheriffs, under-sheriffs, bailiffs, [a]serjeants, beadles and attendants, by themselves and their deputies† do compel persons of both sexes staying in churches, and churchyards, and other places, as is said, dedicated to God, (perchance) to attend on prayer, to be arrested and violently torn from thence with the disturbance of divine worship; sometimes with fighting, and the pollution of the churches under colour of executing a secular office, by means unfit to be used in churches, to the scandal and detriment of the churches, and the hazard of their own souls, and the pernicious example of others. Now we Thomas,

* [*Constitutiones in concilio Londinensi editæ sexto die mensis Julii, anno Domini* MCCCCLXIII. Ex reg. Bourchier fol. 19. b. et reg. Alcock Wigorn. fol. 147.]

† [Johnson *omits*, hiis diebus plus solito, S. W.]

by divine permission archbishop of Canterbury, desiring, as we are bound, to apply a remedy against such abuses to such as have reprobated the law of God and His holy Church, and lest we should seem to approve of it, do by authority of this present provincial council ordain and prohibit any secular officer by what name soever called, to arrest in any civil or pecuniary action, or to force out of a church or any sacred place, and particularly the church of St. Paul's, London, (especially while divine service is there celebrated,) any man or woman, under pain of excommunication. And if any sheriff, under-sheriff, mayor, bailiff, serjeant, beadle, attendant, or other secular officer, under whatever name he passes, be a rash violator of this our statute, or give authority, help or consent to such violation, we will that he do *ipso facto* incur the sentence of the greater excommunication, not to be absolved from the same till they have made competent satisfaction to the persons and churches injured. And we make a special reservation of their absolution to the diocesans of the places. And we will that they be bound in the same sentence who lay violent hands even on a layman in churches, or other consecrated places.

[a] Lat., *Satrapæ*. Yet I have ventured so to turn it, since it comes between *ballivi* and *bedelli*. It is scarce credible how the Latin tongue was debased by the ecclesiastics of this age. You have the same word below in the same situation, which makes me believe that it is no error in the scribe or press.

2. Although in this catholic and glorious kingdom of England, the preachers of the Word of God have sufficiently considered and declaimed against the new ill-contrived fashions of apparel of the clergy and people for several years, by reproof, reprehension and entreaty, according to the Apostle's doctrine; yet few or none desist from these abuses, which is much to be lamented. It is fit then that they who are not reclaimed by divine love be restrained by fear of punishment. And if we who by divine permission are set over others to reform them, neglect to reform ourselves and clergy, we fear, lest the people subject to us, observing that our lives and manners differ from our sermons, do thence take occasion to distrust our words, and so be prompted, [2 Tim. iv. 2.]

which God avert, to contemn the Church of Christ and His ministers, and their sound doctrine and authority. Desiring therefore to apply a remedy to this evil, so far as God enables us, that we may not be to answer for it at the last day, we do by our metropolitical authority, with the unanimous assent and consent of our venerable brethren the lords the bishops, and of the whole clergy of the province of Canterbury, by a decree of this present provincial council, enact and ordain 'that no priest, or clerk in holy orders, or beneficed, do publicly wear any gown or upper garment, but what is close before, and not wholly open, nor any bordering of skins or furs in the lower edges or circumference: and that no one who is not graduated in some university, or possessed of some ecclesiastic dignity, do wear a [b]cap[1] with a cape, nor a double cap, nor a single one with a cornet, or a short hood after the manner of prelates and graduates (excepting only the priests and clerks in the service of our lord the king), or gold, or any thing gilt on their girdle, [c]sword, dagger, or purse. And let none of the abovesaid, nor any domestics of an archbishop, bishop, abbot, prior, dean, archdeacon, or of any ecclesiastical man who serves them for stipends, or wages, and especially they who serve in a spiritual office, wear ill-contrived garments scandalous to the Church, nor [d]bolsters about their shoulders in their doublet, coat, or gown, nor an upper garment so short as not to cover their middle parts, nor shoes monstrously long and turned up at the toes, nor any such sort of garments *. If any trans-

[1] [*Rather* hood]

'* [ne quis sacerdos, aut clericus, in sacris ordinibus constitutus, vel ad beneficium ecclesiasticum promotus, togam, seu superiorem vestem gerat nisi clausam a parte anteriori, et non per totum apertam, neque in fimbria, aut circumferentia inferiori ejusdem borduram habeat de pellibus aut furraturis; et ne quis in aliqua universitate non graduatus, nec in aliqua dignitate ecclesiastica constitutus presbyteris, et clericis in servitio domini regis duntaxat exceptis, caputium penulatum, aut alias duplex, vel de se simplex cum corneto vel liripipio brevi, more prælatorum et graduatorum, nec utatur liripipiis aut typpets a serico vel panno circa collum in publico, aut in zona, ense, vel sica, vel marsupio, quicquam exterius aureum deauratumve gerat, nec comam nutriat, sed habeat coronam suo gradui convenientem. Et ne quis dictarum personarum, seu familiarum domesticarum archiepiscopi, episcopi, abbatis, prioris, decani, archidiaconi, seu cujus vis alterius ecclesiastici viri ad vadia et stipendia cuiquam eorundem serviens, et maxime ille qui spirituali officio inservit, deformes vestes, et ecclesiæ scandalosas; neque in diploide, tunica, aut toga farcimenta, Anglice "Bolsters" circa humeros; neque vestem superiorem adeo brevem, quæ pudenda non tegat et operiat; aut sotulares, nimium rostratos de cætero in publico deferat; aut quovis genere talium vestiturarum uti præsumat. W.]

gressor of this statute and ordinance be discovered after a month from the publication thereof, let him be wholly deprived of the perception of the profits of his ecclesiastical benefice, if he have any: if he have none let him be wholly deprived of his office or service, whether he be clerk or laic, till he reform himself. And let the lord or master, who retains such an unreformed transgressor, or receives him again anew, take upon his own conscience the burden and peril before the supreme judge. And because we ourselves are disposed to use all diligence toward the observance of this constitution in our own person, as God shall give us His grace, 'we do in the Lord exhort all our venerable [brothers[1]] the [1] [Ed.] lords, the bishops, and other inferior ecclesiastical persons, we admonish all and singular persons subject to us in virtue of strict obedience, in the same Lord*, that they so behave themselves in this respect as may be to the praise of Almighty God, and for the avoiding scandal to His Church; that we may not hereafter be forced to aggravate the penalties of this constitution.

[b] *Caputium penulatum.* Lat.

[c] From hence one would be apt to think that clergymen now wore swords. The Oxford articles for reformation, A.D. 1414, mention *Armigeri promoti*, and describe them as young men *Armis insolentes, qui nec horas dicunt canonicas, nec habitu vel tonsura distinguuntur a laicis, qui prabendas occupant et capellas.* MS. Ben. Col. No. 183. And again toward the end, they speak of some as *Clerici nomine, milites habitu, actu neutri*†:

'* [venerabiles fratres nostros dominos episcopos in Domino exhortamur, cæterasque personas ecclesiasticas inferiores, omnes et singulas nobis subditas, in virtute districtæ obedientiæ firmiter in eodem monemus, W.]

† [The following is the title of the articles in Wilkins, together with the two passages to which Johnson refers:

"*Articuli concernentes reformationem universalis ecclesiæ editi per universitatem Oxon.* Ex MS. coll. corp. Christi, Oxon. n. 183; collat. cum MS. Cott. Faust. C. 7. fol. 218. seq."

*Quintus-decimus, de promotis armigeris.*

Cum cedat ad subversionem et scandalum antiqui regiminis ecclesiæ matricis, quod juvenes tanquam armigeri insolentes, qui nec horas dicunt canonicas, nec habitu vel tonsura distinguuntur a laicis, præbendas in Ecclesia occupant et capellas; igitur ne deteriora contingant, deponant prælati desidiam, et legis edictum aspere exerceant contra tales.

*Quadragesimus quintus, de nimio apparatu clericorum.*

Quia quidam solo nomine clerici, habitu milites, actu neutri, et dum utriusque ordinis esse cupiunt, utrumque deserunt et confundunt; qui tot mortibus digni sunt, quot suos subditos exempla perditionis transmittunt; placeat ergo ordinare, quod luxus vestium splendidarum, et ornatus superfluus a viris ecclesiasticis et eorum vernaculis tam per pœnas dictatas, quam actu secutas sit effectualiter interdictus. Wilkins, vol. iii. p. 360, 362, 365.]

and it seems plain, that these swords or daggers were not forbidden, at least not to them who were in the king's service.

[d] This word is expressed in English, and therefore there can be no mistake in it. It is commonly said, that in (king shall I call him ?) Richard the Third's days bolsters on the shoulders were in fashion, that men might seem to imitate that prince in his deformities, or lest it should seem a fault in subjects to appear straighter than their monarch. This, if true, was a fulsome flattery in all, especially in ecclesiastics. And it is probably true, that this practice prevailed in Richard the Third's usurpation: for this constitution was made but about twenty years before he took possession of the throne. But then it must not be said that it began in his reign, but might then be continued in complaisance to the monstrous tyrant.

## A.D. MCCCCLXVI.

### ARCHBISHOP NEVIL'S CONSTITUTIONS.

LATIN. [Sir H. Spelman, vol. ii. p. 699. Wilkins, vol. iii. p. 599*.]

THE constitutions of [a] George Nevil, archbishop of York, made in a provincial synod in the metropolitical church of York on the 26th day of April in the year of our Lord 1466.

[a] Brother to the earl of Warwick the king-maker: this archbishop had King Edward IV. prisoner some time. But the king revenged his own cause effectually afterwards.

George, by divine permission archbishop of York, primate of England, and legate of the apostolical see, to all and singular abbots, priors, ministers, rectors, vicars, and other prelates of churches, and to all clerks and laymen of our diocese and province of York, eternal health in the Lord. Though some constitutions very useful for the preservation of ecclesiastical liberty and the guarding of faith have been made and lawfully published by our predecessors the archbishops of York in the provincial synods celebrated by them, yet the old enemy envying the welfare of the faithful, and always suggesting and adding new evils to old ones, in order to carry the more with him 'to [the infernal] gaol †, labours daily with strange arts to subvert the orthodox faith, disturb the quiet of men, and demolish ecclesiastical liberty: we therefore desiring to obviate the attempts of the devil, and the evil deeds of men, for the guarding of faith, increase of the same, the reformation of manners, and the defence of

* ["*Concilium provinciale Eboracense infra ecclesiam metropolitanam Eboracensem die 26. mensis Aprilis, A.D. 1466, celebratum; in quo constitutiones sequentes a Georgio Nevill, archiepiscopo Eborum, editæ.* Ex MS. Cotton. Vitellius A. ii. fol. 160." To this title Wilkins appends the following note:

Concilium hoc absque brevi regio ex variis causis, Ecclesiæ statum et libertatem concernentibus, coactum fuisse testatur registr. iv. dec. et capit. Dunel. fol. 165 et 166.]

† [ad tartara, W.]

ecclesiastical liberty, with the consent and assent of our suffragans and prelates, and of the clergy of our province, have caused these constitutions which we publish, to be made, and add them to those which had been made before. And we will, that they be written and incorporated among the other provincial statutes, and that they be firmly observed by all our subjects of the province of York.

1. [b] "The ignorance of priests," &c., the same with the ninth of Archbishop Peckham, 1281. I can observe no remarkable difference, save that the York copy is very full of errors and chasms.

[b] It seems strange that these constitutions, transcribed from those of the province of Canterbury, should need a new sanction, when they had all been received here but three years before; but just so the English Church received the pope's canon law, and yet in almost every provincial synod some particular parts of it were reinforced, though our bishops did not transcribe *verbatim*, as those of York here do those of Canterbury. And the truth is, the canon law of the pope was received here with as much reserve as the northern province here received those of the southern, though they did not so freely express their reservations as these northern bishops did in their constitutions, 1463. It is sad to consider that in a hundred and twenty years' time the English clergy had gotten no better constant instructions for the people than those of Archbishop Peckham.

2. [c] The same with the fifth of Archbishop Stratford, 1343, for the tithe of timber-trees.

[c] King Edward IV. in the second year of his reign, viz., 1462, had by his charter to the Church and prelates expressly granted the tithe of timber trees, and promised that his courts should not send prohibitions to the ordinaries in such cases; yet it seems this archbishop saw occasion to reinforce this constitution within four years after the granting of that charter. It is farther observable that this prince in that charter confirms all the pretended liberties of the Church, and particularly as to the proceedings of their court, (maugre all prohibitions, and without any consultation,) and freeing all clerks from any imprisonments, attachments, or indictments by any secular power: nay, he sets aside all premunires and other penalties incurred by prelates in the exercise of what they called their liberties, "any statutes of his predecessors notwithstanding:" and I can see no reserve that he makes but only that of two lines, viz., that this present grant shall in no wise be extended to the obtaining of benefices, or exemptions, or capacities with a monk's portion* (the meaning whereof I take to be, that none shall get a benefice from the pope by any pro-

* [Wilkins, vol. iii. p. 583-5.]

vision of his, that no religious house shall purchase of the pope an exemption from the jurisdiction of the ordinary, nor any monk a capacity of a secular dignity, or benefice in the Church to be held together with his place in the monastery), yet Archbishop Nevil complains heavily of the infringements of these liberties, const. 4, 5, and in the same words that Archbishop Stratford did above a hundred years before. In a word, either Edward the Fourth had an ill memory, as his father had before him, or else Westminster-hall over-ruled the royal prerogative. In truth many kings made such promises to the clergy upon their first accession, which yet afterwards they found occasion to break.

3. The same with the ninth of Archbishop Stratford, 1343, against fraudulent deeds of gift.

4, 5. Are the same with the twelfth of Archbishop Stratford, 1343, *mutatis mutandis* against the obstructors of ecclesiastical process.

6. The same with the last of Archbishop Stratford, 1343, against fraudulent suits.

7. Though by the statutes of the [d]general council, and of Pope Clement, it is expressly forbid that [e]questors be any where admitted without shewing the letters of the pope or diocesan; or to preach any thing to the people but what is contained in those letters, and that after the apostolical letters have first been carefully examined by the diocesan: yet some questors with extreme impudence, and to the deception of souls, have granted indulgences to the people from a motion of their own, have dispensed with vows, have absolved from murders, perjuries and other sins, have remitted what has been stolen for an uncertain sum of money given to them, have relaxed a third or fourth part of penances enjoined, have falsely affirmed that they have drawn three or more souls of the parents and friends of those who have given them alms out of purgatory, and conveyed them to the joys of paradise, have given plenary remission of sins to their benefactors in the places where they were questors, and, to use their own words, have [f]absolved them from all punishment and guilt: [g]Clement the pope aforesaid, in the council of Vienne hath wholly forbidden such abuses to be attempted for the future, and revoked all privileges entirely by apostolical authority, if any such were granted in the premisses, or in any of them, to some places, orders, or persons of questors of this sort, willing that the questors, if any of them

offend in the premisses, or in any other manner abuse their privileges, should be punished by the bishops of the places, their privilege not at all availing them in this respect. Yet these questors now-a-days, intoxicated with covetousness, extort money by fetches of wit, they try their aforesaid impositions, and attempt the like or greater; that is, they absolve such as are excommunicate by ecclesiastical judges, and remit public solemn penance inflicted by the ordinaries of places for public excesses, or at least defer their coming to church on such days as were assigned for the fulfilling of their penance; and bury those who murdered themselves in the churchyards, and commit some other enormities by which ecclesiastical censure is vilified, and the authority of the keys of the Church brought into contempt. We therefore desiring fully to abolish these abuses, do will and charge that the [h] statutes of the councils aforesaid be firmly observed in our diocese and province; and when such letters apostolical have been examined by the bishop, and a schedule of the indulgences [to be preached] in writing annexed to his letters, let nothing be proposed or preached by such questors but what is contained in the schedule aforesaid. But if any questor do presume to attempt any of the abuses aforesaid, or in any respect to act contrary to this our constitution, let him be wholly removed from his office, and never admitted to it again. And if any rector, vicar, or chaplain[i] admit any such questor [to preach] in his church or chapel, contrary to the form of the councils, let him be bound to pay forty shillings penalty of lawful money of England, to be applied to the fabric of the metropolitical church of York. Yet by this we intend no prejudice to be done to those who have episcopal jurisdiction.

[d] Lateran, A.D. 1215, c. 62*.

[e] These were commonly, and justly in England, called pardon-mongers. They were friars employed by the pope, bishops, or both, for the raising money towards building of churches, and the like, and were authorized to assure the people of so many days or years of pardon, upon condition that they gave a certain sum of money toward the intended work. They had considerable privileges, with which they were not content, but were still enlarging of them. . At last the pope made use of them for raising money

* [Concil., tom. xxii. col. 1050.]

to fill his own coffers, or to raise portions for his nieces. The extravagancies of these friars gave rise to the Reformation: therefore the council of Trent had good reason to suppress the practice and very name of questors. Sess. 5. c. 2; Sess. 21. c. 9 *.

[f] Pope Clement V. in the council of Vienne charges them with these very words, which import a full and perfect absolution, whereas their commission was always limited to certain terms. See Clementine, lib. v. tit. 7. c. 1 †.

[g] The main of the five Clementine books is taken out of this council of Vienne, which was holden in the year 1312. But see especially lib. iii. tit. 7. c. 2 †.

[h] See notes d, f, g.

[i] In Sir H. Spelman is added *vel curata:* perhaps it should be *curati* ‡.

8. Whereas some parishioners of our diocese are so perverse that they refuse to contribute to the fabric of their mother parish church, thinking that they are to be excused from every thing of this sort on account of their contributing to the fabric of [k]chapels within their parishes: we considering that the said parishioners were bound to contribute to their church before, and more than to their chapel, thereupon we ordain that though the said parishioners contribute to the repair of their chapels, yet that they be in no wise excused from contributing to the fabric of their mother church, and supporting the other burdens thereof, but be bound to contribute at the discretion of the ordinary: and that if they refuse so to do after lawful admonition given in this respect, let the said chapels be interdicted, and no divine offices there celebrated, until the parishioners effectually take these burdens on themselves, or give security for the doing thereof.

[k] These were clearly chapels of ease voluntarily erected by the inhabitants by leave of the ordinary; and it was sufficient that they who retained to these chapels were excused from going to their mother church, which was at a great distance: therefore it was just upon their refusal to put them in *statu quo* by interdicting the chapels.

9. Though [l]Othobon of good memory, formerly legate of the apostolical see in England, very strictly prohibited monks and canons regular to spend their time alone in their manors and [m]churches, commanding all abbots and priors that they should forthwith call all such home to their convents, or

* [ed. Romæ, A.D. 1564. pp. 29, 138.] † [ap. Corp. Jur. Can.]
‡ [vel curatus, W.]

should take care that a [n]monk or canon should be sent to accompany them: or else that the abbots or priors should be suspended till they obeyed: yet some abbots, priors, and provosts of the religious, not only permit monks, canons, and other their subjects, to live out of the verge of their monastery, but grant them letters patent of licence to absent themselves from their monasteries, 'and to have beasts and servants*, and to remain among secular persons; by which means such subjects have an opportunity of wandering about contrary to the canonical sanctions and regular institutions. We seeing these licences[o] to be so contrary to decency, and perilous to the souls of these religious†, do firmly enjoin and command, that no abbot, prior, provost, minister, master, or other religious president whatsoever, presume to grant such licence to his subjects for the future under the penalty of forty shillings sterling, to be faithfully applied to the fabric of our metropolitical church of York, beside the [p]punishment of the legatine constitutions aforesaid. And we will that the religious vagabond be deemed an apostate. Yet by this constitution we intend not to derogate from those who by indulgence of the apostolical see serve their own churches or chapels, by some one of their own religious subjects.

[l] See this constitution of Othobon in John Athon, p. 146; it is the sixth in number after those translated by me, 1268.

[m] That is, parsonages appropriated to their houses.

[n] Monks, and other religious, were never allowed to go singly.

[o] In the Latin here is added, *seculares quoque earundem.*

[p] Viz., suspension, as above.

10. Whereas the church, according to the gospel, ought to be an house of prayer, and the canons and civil laws have providently enacted out of reverence to God, and for the convenience of Christ's faithful people, who there continue in prayer, that no one fleeing thither, or staying there for the sake of devotion, or on other accounts, should be forced from thence, or cited, or arrested there, we imitating these laws to the best of our power, after due deliberation do

'* [ac annualia et servitia recipienda, W. Spelman has 'animalia.']

† [Nos hujusmodi licentias seculares quoque earundem tam indecentes, quam animabus eorundem religiosorum periculosas esse conspicientes, W.]

ordain that[q] no ecclesiastical or secular person do arrest, cite, force out, or cause to be arrested, cited, or forced out, any man that is in any church, while divine offices are there celebrated, on occasion of any action or plaint, under pain of the greater excommunication, which we will, that the offender in this point do incur *ipso facto*.

[q] The statutes 50 Ed. III. c. 5 *, and 1 Rich. II. c. 15 †, do forbid arrests in churches and churchyards, but not citations; and farther, those statutes were clearly made for clerks only, and above all, the remedy by these statutes is only the imprisonment of the offender, and a composition with the party arrested: these acts being deficient as to these particulars, (especially because catch-poles are commonly men of no estates, and therefore able to make no pecuniary satisfaction,) therefore Archbishop Nevil supplies them, as far as was possible, by an ecclesiastical authority.

11. The same with the sixth of Robert Winchelsey in the year 1305, beginning at "Whereas therefore by the command of Holy Scripture, &c.‡" The most remarkable difference is, that this constitution does not mention "tithe of wine," as

* [Statutes of the Realm, ed. 1810, vol. i. p. 398.]

† [ibid., vol. ii. p. 5.]

‡ [Cum, sacro eloquio jubente, de omnibus, quæ novantur per annum, et nullo tempore excluso decimæ sint cum omni integritate absque diminutione solvendæ; omnibus et singulis rectoribus, vicariis, capellanis parochialibus, et ecclesiarum parochialium curatis, per nostram provinciam constitutis, in virtute obedientiæ mandamus, firmiter injungentes, quatenus diligenter moneant et efficaciter inducant, et quilibet ipsorum in parochia sua moneat et inducat, quod dicti parochiani omnes decimas, inferius annotatas, suis ecclesiis persolvant; videlicet decimam lactis seu lacticinii a primo tempore suæ innovationis, tam in mense Augusti, quam in aliis mensibus; de proventibus etiam boscorum, virgultorum, pannagiis sylvarum, vivariorum, piscariarum, fluminum, stagnorum, arborum prostratarum et excisarum, pecorum, columbarum, seminum, fructuum, et bestiarum, warennarum, aucupii, hortorum, curtilagiorum, lanæ, lini, croci, grani, terrescidiorum, et carbonum, in locis ubi fabricantur et fodiuntur, cygnorum, et caponum, aucarum, anatum, ovorum, agrorum, apum, mellis et ceræ proventuum, molendinorum, venationum, vellerum, artificiorum, negotiationum, necnon et agnorum, vitulorum, pullorum equinorum, capriolorum, et aliorum fœtuum animalium, tunc ad decimam dandorum, cum se alendo in pascuis a matribus separatis commode vivere possint. De fructibus et garbis, quarreris, calce, mineris; de nutrimentis animalium, pascuis, pasturis, tam communibus, quam non communibus, secundum numerum animalium et dierum, sicut expedit ecclesiæ; de fœno, ubicunque crescit, aut in semitis, magnis pratis sive parvis, secundum verum valorem; et de omnibus proventibus aliarum rerum de cætero satisfaciant competenter ecclesiis, quibus de jure tenentur, nullis expensis ratione præstationis decimarum deductis seu retentis, nisi tantum de præstatione decimarum, artificiorum, et negotiationum: quodsi monitionibus hujusmodi parere contempserint, per suspensionis, excommunicationis, et interdicti sententias per ordinarios locorum ad præstationem decimarum prædictarum compellantur; consuetudine contraria nequaquam obstante, quæ peccata non minuere sed augere dignoscitur. Dat. in synodo provinciali celebrata in ecclesia metropolitana Eborum 26. die mensis Aprilis, anno Domini MCCCCLXVI. Wilkins, vol. iii. p. 604.]

the other does, but speaks of tithe of coal where they are dug, which is not in the other, and likewise "tithe of saffron." It ends with these additional words, "A contrary custom in any wise notwithstanding, for that does not lessen sins, but increases them. Dated in the provincial synod celebrated in the metropolitan church of York, A.D. 1466." Then it proceeds to Archbishop Kemp's constitutions, in the form before given to the reader, "Upon examining the registers," &c. See 1444.

## A.D. MCCCCLXXXVI.

### ARCHBISHOP MORTON'S CONSTITUTION.

DECREE of John Morton, archbishop of Canterbury, and legate of the apostolical see, in the convocation of the prelates and clergy of the province of Canterbury holden in the church of St. Paul's, London, on the thirteenth day of February, in the year of our Lord's Incarnation 1486, and of his translation the first. [Sir H. Spelman, p. 712. Wilkins, vol. iii. p. 619 *.]

Because, [a]according to the [b]Holy Scripture "a concern for the dead is holy, and wholesome," and we are bound to do good, "especially toward them of the same house;" with the approbation of this council we ordain, that when for the future any one of our brethren the bishops happens to die, and his death is notified to the surviving bishops, every bishop of this province so surviving him, so soon as conveniently he can and within a month after notice of his death, be bound to say, by himself, or by some other, the exequies and six masses for the soul of the deceased bishop†, as he desires to escape the [c]punishment imposed by the canons on wilful transgressors. [Gal. vi. 10.]

[a] See const. 8. of Peckham, 1279.

[b] 2 Macc. xii. 46. *sancta et salubris cogitatio. Vulg.*‡

[c] I find no particular punishment assigned either by the canon law or our constitutions for this omission: therefore I suppose it was left to the discretion of the archbishop.

* ["Ex reg. Morton, fol. 33. seq."]

† [Compare in Johnson's former volume, Canons of Cealchythe, A.D. 816, 10.]

‡ [Sancta ergo, et salubris est cogitatio pro defunctis exorare, ut a peccatis solvantur. 2 Macc. xii. 46.]

## A.D. MDXIX.

### PREFACE. POPE LEO'S RESCRIPT TO ARCHBISHOP WARHAM.

As I began with Pope Gregory's answers to Augustin the first archbishop of Canterbury, so I shall end with a rescript of Pope Leo the Tenth, to the last archbishop of Canterbury, before our renunciation of all subjection to the see of Rome: by which it will appear that in the nine hundred years which this Church of England continued in a state of dependence on that of Rome, our archbishops had made very small improvements in the knowledge of things that were even most frivolous and indifferent, and that Archbishop Warham was as far to seek in the conduct of himself in relation to the government of the Church, as his first predecessor in the see: for none of those questions which he sent to Pope Gregory to be resolved were less difficult or weighty than this of Archbishop Warham to the present pontiff. But Gregory was a great divine, and sufficient of himself to answer the archbishop's enquiries; whereas Leo came as much behind him in knowledge as he did in years; and could not determine so easy a point without the advice of his brethren.

I have taken notice of very few of the popes' bulls or letters, as being of very little consequence to the designs which I had in view. I have particularly passed over the constitution of Paul the Second against alienating, or letting long leases of church-land; and of Sixtus Quartus in the year 1476, against the violators of Church liberties, and Innocent the Eighth's letter to Henry the Seventh on the same subject. I shall only here make this general remark on them, that the privileges which the prelates and clergy then assumed, were so unreasonable and extravagant, that though

kings on their advancement to the throne saw it necessary to promise they would guard and observe them in order to secure so great an interest as that of the clergy; yet they afterwards found it unpracticable to be true to their engagements, unless for the sake of the clergy they would incur the ill-will of the rest of the nation, and in effect unking themselves. And though popes to secure themselves were always ready to swagger and speak big in behalf of the liberties and immunities of the Church and clergy; yet there was so flat a contradiction to common justice, and even to common sense in many of them, that it was impossible for the greatest authority that ever was, without downright violence, and external force, always to maintain them in a nation so sensible of wrong, as the English are; and though popes pretended a zeal for the liberties of the clergy, yet they often countenanced the state's oppressing of them in some particulars, that themselves might be suffered to do it in other points. But I choose to conclude with the following rescript to shew my reader what poor jejune informations and instructions we received from Rome in exchange for vast sums of money, which we yearly transported thither: for my reader is to consider this, though as very trifling, yet as one of the most valuable, or at least innocent sort of rescripts that came from thence.

## A.D. MDXIX.

### POPE LEO'S RESCRIPT TO ARCHBISHOP WARHAM.

LATIN. Sir H. Spelman, vol. ii. p. 727. [Wilkins, vol. iii. p. 683*.]

To our venerable brother William, archbishop of Canterbury, legate born to us and to the apostolical see, pope [a]Leo the Tenth. Venerable brother, health and apostolical benediction. Your care has prompted you to ask of us on what day you ought to enjoin a fast to your people, since on this year the vigil of the Nativity of the blessed John Baptist falls on the feast of the most holy Body of Christ: having therefore taken mature deliberation [b]with our brethren on this point, we think fit thus to answer you, viz., that we ordain by this constitution for ever to endure, that the vigil of the nativity of the blessed John aforesaid, when it falls on the [*ut supra*[b]] feast of the Body of Christ (in which the remembrance of our Saviour, on whom our salvation depends, is called to mind), in regard to so great a festival solemnity, the Wednesday ought to be fasted, and is to be fasted as that vigil: and we command, that for the future it be so observed by all, when the said vigil falls on the feast of the Body of Christ: therefore you our brother shall command the people committed to you throughout the province of Canterbury, and your suffragans, that on the present, as well as all future years, in which the vigil of the said John Baptist shall fall on the feast of [c]the Body of Christ, they fast on the foregoing day, that is, Wednesday, and observe that as the vigil in veneration and devotion to the said Nativity. Dated at St. Peter's, Rome, under the seal of the fisher, on the nineteenth day of February, 1519, in the sixth year of our pontificate.

[a] This was that pope who granted those extravagant indulgences, which provoked Martin Luther to preach against them, which he began to do

* ["*Declaratio jejunii vigiliæ sancti Johannis Baptistæ, contingentis in die Corporis Christi.* Ex reg. Warham, fol. 26. b."]

about two years before the date of these letters. And violent agitations were thereby caused at this time in Germany, Italy, and other places.

[b] Though Pope Leo was allowed to be a very polite man, and excelled in human learning, yet his defects in ecclesiastical knowledge were notorious: he was so far from practising religion, that he did not know it: but he was of a very noble family, and this answered all objections.

[c] The feast of Corpus Christi was always on the Thursday in the week next after Whitsun-week. If this feast had a vigil assigned to it, there might have been a question raised whether the two vigils could have been kept on the same day; but Midsummer-day having a vigil and Corpus Christi none, I cannot see any grounds that our archbishop had to doubt, but that the vigil of Midsummer was to be anticipated, the other feast intervening, according to the old rule, that if a vigil fall on a Sunday it is to be kept on the foregoing Saturday: for by parity of reason, if a vigil fall on a holyday, it is to be kept on the day foregoing that holyday. See *Decretal.*, lib. iii. tit. 46. c. 1.

# APPENDIX.

WILKINS, CONCILIA, vol. iii. p. 523.

## A.D. 1434*.

| Papæ Rom. | Archiep. Cant. | Anno Christi | Reg. Angliæ |
|---|---|---|---|
| Eugen. IV. 4. | Henr. Chicheley, 21. | 1434. | Henric. VI. 13. |

*Convocatio prælatorum et cleri provinciæ Cant. 7 die mensis Octobris in ecclesia S. Pauli London.* Ex reg. Chicheley, p. ii. fol. 99. seq.

PERLECTO mandato archiepiscopi miserrimum ecclesiæ statum deflente, et aliis juxta formam consuetam recitatis, secundo concilii die dictus reverendissimus pater in domo capitulari antedicta, assistentibus sibi tunc ibidem Elien. Norwic. Cicestren. et Assaven. episcopis, ac aliis prælatis et clero suo provinciæ ibidem tunc congregatis, causam convocationis suæ ea vice coram eis omnibus exposuit, et istam postissimam esse declaravit; viz. quod jurisdictio ecclesiastica per brevia regia et alias vias exquisitas et imaginata brevia plus solito perturbata extitit et impedita, et præcipue per brevia illa de "Præmuniri facias," quæ nonnisi infra paucos annos in aliqua materia infra regnum aliquem habebant cursum; ac etiam quod ministri ecclesiæ per inditamenta falsa, et alias vexationes injustas indies opprimitur. Sicque sancta mater ecclesia Anglicana, quæ in suis libertatibus olim pollebat, floruit, et alias ecclesias antecellebat, nunc in præmissis et aliis gravaminibus quampluribus tam in se, quam in suis ministris non modicum est depressa, et a sua (quod dolendum est) nimium collapsa dignitate. Unde ut cum ipsorum præsidio pariter et consilio, remedium valeret apponere in præmissis; ipsos omnes tunc fecerat, ut asseruit, convocare. Et tunc habita communicatione super hujusmodi gravaminibus, ordinatum erat tunc ibidem, ut hujusmodi gravamina, ac alia quæcunque, in quibus dictus

* [See in this vol. p. 493, note *.]

clerus se sentiit gravari, necnon si quæ forent crimina et excessus infra clerum usitata, quæ necessaria reformatione indigerent, in scriptis redigerentur, ut super hiis omnibus, ex communi consensu, consilio, et auxilio remedium posset debitum adhiberi. Quibus sic factis, dominus continuavit convocationem suam usque in crastinum, diem Sabbati; et sic de die in diem continuata erat convocatio usque in 19 diem Octobris; tractando et imaginando media diversa, quibus possent præmissa reformari. Et interim deputati erant quidam in utroque jure doctores et bacalarii, viri scientifici, qui hujusmodi gravamina conciperent, ac querulantes quoscunque de clero de gravaminibus et injustis vexationibus in eorum partibus audirent, et ipsam redigi facerent in scripturam. Quæ postea in magno articulorum numero in scripturam redacta fuerant per ipsos deputatos, et coram domino et confratribus suis, ac clero producta, et in publico ibidem perlecta, et super eis tractatus et advisamenta diversa adhibita, sed finaliter tamen super hujusmodi gravaminibus nullum adhibitum erat, nec consecutum est remedium effectuale. Nam instante protunc in civitate London. pestilentia gravi, desideravit clerus, ut dominus vel convocationem suam dissolveret, prorogaretve, seu ad alium locum transferret, asserendo per suum prolocutorem, viz. mag. Thomam Bekyngton prædictum, non sani esse consilii dominum, et prælatos, ac clerum ibidem pro tunc congregatos sub tali pestifera constellatione diutius expectare. Ipso tamen die, viz. 19 die mensis Octobris, dominus ex consensu venerabilium patrum confratrum suorum, viz. Elien. Bathon. Lincoln. et Cicestren. episcoporum; et ad petitionem cleri, ob honorem sanctæ Frideswidæ, almæ universitatis Oxon. specialis advocatæ; festum ipsius ipso die singulis annis cum IX. lectionibus et aliis quæ ad hujusmodi festum, cum regimine chori, secundum usum Sarum pertinent, per totam provinciam suam perpetuo celebraretur. Et habita ipso die etiam aliquali communicatione de excessivis stipendiis capellanorum, et de vagationibus presbyterorum de una patria ad aliam, contra constitutiones provinciales in hac parte editas, continuata fuit convocatio usque in crastinum.

Quo die mandavit mag. Thomæ Bekyngton, et aliis diversis de clero, ut articulos illos de generali sententia, quæ consueta est quater in anno per curatos ecclesiarum publicari, et solenniter denunciari, conciperent in lingua materna, sub breviori modo, quo possent, et ipsos coram eo et confratribus suis ostenderent et exhiberent die Veneris proximo, viz. 22 die Octobris, ad quem diem continuata erat convocatio, et ab illo die usque in crastinum diem, viz. Sabbati. Quo die producti erant articuli memorati, qui postquam lecti erant coram domino, et confratribus suis, ac clero præ-

dictis in dicta domo capitulari, et per eos, ut eis videbatur expediens, correcti et emendati; dominus de consensu confratrum suorum prædictorum statuit et ordinavit, ut iidem articuli quolibet anno ter, viz. dominica prima adventus Domini, dominica prima xlmæ, et dominica proxime sequenti festum S. Trinitatis, deberent publicari, et solenniter denunciari in singulis ecclesiis suæ provinciæ per curatos earundem; quorum articulorum tenor inferius describitur. Quibus sic factis, ad instantem petitionem confratrum suorum, et cleri, dominus hujusmodi convocationem suam dissolvit, et feliciter consummavit.

Tenor vero articulorum dictorum sequitur, et est talis:

[Here follow the articles of excommunication in English, as above, p. 494—6, note *.]

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WILKINS, CONCILIA, vol. iii. p. 539.

## A.D. 1444-5*.

| Papæ Rom. | Archiep. Cant. | Anno Christi | Reg. Angliæ |
|---|---|---|---|
| Eugen. IV. 14. | Joh. Stafford, 2. | 1444. | Henric. VI. 23. |

*Convocatio prælatorum et cleri provinciæ Cant.* 19 *die Octobris in ecclesia S. Pauli London.* Ex reg. Stafford, fol. 28. seq.

REVERENDISSIMUS tres huic convocandæ synodo assignabat rationes; propter literas regias, propter quamplurima in ecclesia Anglicana reformatione digna, et propter subsidium regi concedendum: hoc tamen viva voce etiam expetiverunt nonnulli consiliarii regii, intrantes domum capitularem 22 die mensis prædicti; aliis tamen intervenientibus negotiis, illud concedere distulerunt. Eodem tempore, recedentibus legatis regiis, dominus mandavit prælatis et clero quatenus super præmissis et quadam litera pro solemnizatione festi S. Edwardi, per regiam majestatem sibi destinata, ac quadam schedula stipendia capellanorum, et literas commendatitias eorundem concernente per clerum ibidem ministrata, diligenter inter se communicarent. Cujus quidem literæ regiæ et schedulæ tenores sequuntur in hæc verba:

Right reverent fader in God, right trusty, and right well biloved, we grete you wel. And late you wite, that oure ful grete plesir and worldly joy were the spirituel and seculier persones of this our royaulme to be endowed in vertues and deve devocion unto God, be the meene whereof we doubte not but that all grace, peas, and pros-

* [See in this volume, p. 504, note *; p. 505, note *; p. 506, note †.]

perite shal growe unto us, and al our reaumes, lordships, and subgetts of the same; and how be it at oure request ye exhorted and moneshed late all your suffragans, to see and ordeyne certain processions, and other devotions to be doon wekely for the peas in al the places of religion, and parish churches of thaire diocises. Whereupon in our conceit followen and growen specially the graces that God hath late sent us by waye of mariage, and the meenes of peas now begonnen betwyx us and oure oncle of Fraunce. Nevertheless, to thentent that it may please God to guyde forther, graciously conclude, and perpetually stablishe the said peas, which is so plesant unto hym, and proufitable to al the worlde; we pray you hertily, that in this presente convocation ye, and your said suffragans see, that the said wekely processions and devocions be continued hereafter for the wele of the said peas, and for the good spede of our moost dere and moost entirely welbiloved wif, the quene, and of al the lordes, and other our trewe subgetts, that we have appointed to conduyt hir unto our presence at this tymes. And forasmuch as amongs all other saints, we trust that the blessed and glorious confessour St. Edward is a special patron and protectour of us, and of our royaulme, wherof he sometyme bare the coronne, whoos day of translation is kept as now double feest in holy church only, we, for the more laude and praising of God, worship of the said glorious saint, and for thencrece of more devocion amongs christen puple, pray and exhorte you to decre and ordeyne by thauctorite of the said convocation, that the said day of St. Edward be kept and observed perpetuelly herafter, as double feest, and holy day thourgh al youre province; wherein ye shall do unto God right acceptable service, and to us right singulier plaiser. Yeven under our signet at our castel of Wyndesore the 15 day of October.

*Reformanda in convocatione cleri.*

1. Imprimis, deliberatum est per clerum, quod pœna constitutionis de presbyteris stipendiariis tollatur.

2. Item, quod constitutio "Adeo quorundam de dimissionibus," observetur, mulieribus conjugatis, et aliis pauperibus, quorum bona 20 marcas non excedunt, duntaxat exceptis.

3. Item, quod addatur pœna ad constitutionem domini Tho. Arundell contra admittentes aliquos capellanos, literis commendatitiis et testimonialibus eorundem non exhibitis.

4. Item quod constitutio domini Henrici defuncti de promotione graduatorum prorogetur ad decennium.

5. Item, quod abbates et priores non licentient confratres suos,

quousque habuerint voluntarios receptores ejusdem ordinis vel strictioris, et quod adhibeant diligentiam suam ad revocandum fratres oberrantes.

6. Et quod nomina collectorum decimæ non certificentur per ordinarios in scaccarium, nisi adveniente die solutionis, vel biduum aut triduum ante, quia graviter hiis diebus mulctantur collectores ante diem.

7. Memorand. an abbates et priores habent contribuere ad expensas procuratorum ratione ecclesiarum appropriatarum.

*Reformanda in parliamento pro ecclesia.*

1. Inprimis, reformentur statuta "De præmunir." et præsertim propter terminum "Alibi."

2. Item statutum prætensum de grossis arboribus non decimandis.

3. Item, procedatur de remedio contra perjuria, et iniquissimas inditationes.

4. Item, quod ecclesiæ pensionariæ et portionariæ exiles augmententur de eisdem proc. et solicitat. deput. per clerum super præmissis, custos privati sigilli, secretarius domini regis, mag. Stephanus Wylton, præpositus de Stona, dom. Johannes Bothe, officialis curiæ Cant.

Sequente die Sabbati adveniente, dominus petiit responsum a clero, qualiter deliberati fuerant quantum ad subsidium prætactum domino regi concedendum; et quid sentirent de litera regia pro die translationis S. Edwardi, sub duplici festo futuris temporibus per provinciam suam Cant. celebrando. Et tunc mag. Williel. Biconyll, officialis curiæ Cantuar. totius cleri prolocutor, supplicabat domino ex parte cleri, ut hujusmodi dies translationis S. Edwardi, cujus quidem sancti interventu nedum gentis Anglicanæ armata militia, sed et cleri inermis militia contra hostiles incursus celebriter roboratur, sub duplici festo per suam provinciam solemnizari posset, de confratrum suorum consensu concedere dignaretur. Quo quidem die Sabbati præfatus reverendissimus in Christo pater de consensu confratrum suorum, et totius cleri præsentium in dicta convocatione, statuit et ordinavit dictum festum translationis per totam provinciam Cant. tam in ecclesiis, quam extra, ad modum majoris duplicis festi fore perpetuis temporibus celebrandum, prout plenius in litera, super hoc auctoritate ejusdem reverendissimi in Christo patris singulis suis suffraganeis conscripta, inferius continetur.

Cujus quidem literæ tenor sequitur in hæc verba:

Johannes, permissione divina Cant. archiepiscopus, totius Angliæ primas, et apostolicæ sedis legatus, vener. fratri nostro domino Ro-

berto, Dei gratia London. episcopo, salutem, et fraternam in Domino charitatem. Quanquam admonitione divina per beatum David eximium prophetam et regem, de quo per Dominum dictum est, "Inveni virum secundum cor meum," jubeamur laudare in sanctis suis Dominum, per quos et quibus intervenientibus, idem Dominus et Deus noster plerumque pacem populo suo confirmat, interdum pestes aufert et fames, solidat principatus et regna, confertque victorias timentibus et diligentibus nomen suum, sed et per quos ex sua miraculosa potentia membris languidorum frequentissime in desperatis languoribus antidota votiva impertitur salutis; ipsos nihilominus Dei sanctos et Dominum in illis specialis devotionis prærogativa immensarum laudum præconiis et obsequiosis honoribus attollere et revereri debet, et tenetur omnis ecclesia christiana, quorum specialibus tuetur patrociniis, et illustratur miraculis gloriosis. Propterea, quoniam nos nuper, ut divina majestas peramplius, devotius, et celebrius suis glorificetur in sanctis, in sancta matre nostra ecclesia Anglicana, quæ inter cæteros sanctos beatissimi Edwardi confessoris et regis, piis confovetur suffragiis, frequentibus irradiatur miraculis, et cujus olim meritis, ut tradunt historiæ, regnum Angliæ ereptum fuisse de rabie et persecutione sævissima paganorum; in convocatione ultima nostra ex unanimi vener. confratrum nostrorum, ac cleri consilio et assensu, pensatis, quantum potuit nostra fragilitas, tanti sancti meritis, necnon devotissimis christianissimi regis Henrici sexti domini nostri supremi multiplicatis instantiis specialibus in hac parte, cujus gloriosissimi regis et confessoris intercessionibus et patrociniis sua regnum et celsitudinem tueri non ambigit, constituerimus, decreverimus, et ordinaverimus per nostram Cant. provinciam festum translationis S. Edwardi regis et confessoris annuatim de cætero sub duplici officio solenniter observari; volumus igitur, et vestræ fraternitati tenore præsentium firmiter injungendo mandamus, quatenus festum translationis S. Edwardi prædicti singulis annis de cætero solenniter celebretis, et per vestras civitatem et diœcesim faciatis tam per clericos, quam laicos modo præmisso solenniter celebrari. Volumus etiam et mandamus, quatenus confratribus vestris, et ecclesiæ nostræ Cant. suffraganeis per literas vestras auctoritate nostra et dicti concilii injungatis et mandetis, quibus et nos simili modo injungimus et mandamus, quod ipsorum singuli idem festum sic, ut præmittitur, singulis annis solenniter celebrent, et per suas civitatem et diœcesim modo præmisso faciant perpetuis temporibus futuris a clero et populo solenniter celebrari. Et quid feceritis in præmissis, nos citra festum Omnium Sanctorum proxime futurum distincte certificetis per literas vestras, harum seriem habentes, sigillo vestro consignatas. Mandamus etiam singulis confratribus nostris prædictis,

quod et ipsi singillatim, quatenus præsens nostrum mandatum ipsorum civitatem et diœcesim concernit, nos citra festum natalis Domini proxime futurum per suas literas modo consimili certificare non omittant. Dat. in manerio nostro de Croydon primo die mensis Octobris, A.D. MCCCCXLV. et nostræ translat. anno tertio.

Et quantum ad prætactum subsidium, mag. Williel. Biconyll, prolocutor cleri supradictus, præsentabat domino, dicto die Sabbati, quandam schedulam unius integræ decimæ domino regi concessæ.

Sed dominus rex haud contentus hac decima, mag. Adam Moleyns, custodem privati sigilli, die Lunæ sequente ad domum capitularem misit, aliam integram decimam expetendi causa; ast quia clerus integram decimam concesserat die Sabbati præterito, sub ea conditione, quod dominus statim dissolveret convocationem, petitis ejus haud responderunt ea vice. Quibus sic factis, "clerus domus inferioris desiderabat ab episcopis et aliis prælatis sentire suum super schedula de reformandis in ipsa convocatione per convocationem concepta." Et adtunc dominus Bathon. archiepiscopi illa vice commissarius, de consensu confratrum suorum religiosorum, et cæterorum procuratorum cleri, manu sua propria subscripsit articulos in eadem schedula contentos, prout hic inferius continetur:

Ad primum, qui sic incipit: "Inprimis, deliberatum est per clerum," etc., sic est responsum, Quod prælatis et omnibus placet, quod tollatur illa pœna, et quod id, quod recipit ultra constitutionem, applicetur fabricæ ecclesiæ cathedr. nisi per loci ordinarium fuerit super hoc aliter dispensatum.

Ad secundum, qui sic incipit: "Item, quod constitutio adeo quorundam," etc., sic est responsum per omnes, Istud deferendum usque alias, propter brevitatem temporis.

Ad tertium, qui sic incipit: "Item, quod addatur pœna," etc., sic est responsum, Differatur usque alias.

Ad quartum, qui sic incipit: "Item, quod constitutio domini Henrici," etc., responsum est per omnes, Placet.

Ad quintum, qui sic incipit: "Item, quod abbates et priores," etc., sic est responsum, Stetur juri communi.

Ad sextum, qui sic incipit: "Et quod nomina collectorum decimæ," etc., sic est responsum, Differatur. Et quantum ad reformandum per parliamentum, nominati in dicta schedula fuerunt deputati ad solicitandum dictam materiam. Et incontinenti dominus London. commissarius domini, dicto die nomine ejusdem dissolvebat dictam convocationem.

# INDEX.

## ADVERTISEMENT TO THE READER.

In this index the greater number every where denotes the set or system of canons, constitutions, &c., bearing date the year signified by that number.

The lesser number always shews the particular canon, constitution, or article there referred to. But if the memorial referred to be short there is no lesser number added.

Pf. denotes the translator's preface, Ps. his postscript to any set. If Lat. be added, it signifies the preface or postscript translated from the original Latin.

The same figures refer to the canon, constitution, &c., and to the notes on that canon, constitution, &c.

[The corrections of Johnson's index, as well as the references to the addenda and the notes of this edition, are put within brackets, the pages being added when necessary: a few insertions from MS. notes Wrangham are distinguished by marks of quotation.]

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* [This article was put under the word *Bishop* in the first edition.]

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personally to hear the accusation of laymen in the ecclesiastical court, 1164, 6.
had cognizance of causes concerning lands in frankalmoin, 1164, 9.
and also the court baron, ibid.
to pay king all service that barons owed, except in causes of blood, 1164, 11.
to do homage to king before consecration, 1164, 12.
to help, and be holpen against great men, 1164, 13.
with how many horse and men to make visitations, 1200, 5.
to be moderate in demand of procurations, ibid.

*Bishops*, may demand moderate subsidies of the clergy, 1200, 5.
those subsidies or aids not to exceed procurations, 1336.
to keep priests and deacons whom they ordained without title, 1200, 7.
they or their confessors only to absolve from general excommunications, 1200, 7, *et passim*.
not to charge churches with new pensions, 1200, 8.
might give dispensation for marrying in private, 1200, 11.
their claim to a share in choosing archbishop, set aside by the pope, 1222, Pf.
their regard to poor, to receive and make confession, residence in their churches at set times, and having their professions read to them twice a year, 1222, 2 ; 1237, 22.
in case of lapse, when the advowson is disputed, to collate neither of the litigants' clerks, 1222, 5.
not to alienate without consent of chapter, 1222, 33.
his consent necessary for erecting new religious houses, 1236, 31.
and for grant of pensions, 1222, 38.
to assign confessors to nuns, 1222, 42.
might give leave to seculars to dwell in nunneries, ibid.
his consent necessary for farming a parsonage, 1222, 49.
required to contrive some new penalties against Jews, 1222, 51.
what irregularity of clerks might be cured by them, 1236, 1.
cases in which they only could give penance, 1236, 16. See Reserved cases.
seem to have imposed oaths at discretion, 1236, 24.
matrimony, in what case nulled by his consent, 1236, 27.
church not to be taken down in order to be rebuilt without his consent, 1237, 1.
farming of benefices to be transacted in his presence, 1237, 8.
what to do when there is more than one rector or vicar in a church, 1237, 12.
to celebrate in their churches on great festivals, &c., 1237, 22.
not proceeding against king's officers and lands, to be monished and censured, 1261, 1.
to have prisons for keeping criminous clerks, 1261, 21.
to see especially to the habits and trappings of their own clerks, 1237, 14 ; 1268, 5.
if they were religious, to continue to wear their regular habit, 1268, 5.
to get information against concubinary clerks, 1268, 8.
to send mandate to the bishop of any diocese, into which an adulterer flies, to have sentence of excommunication executed against him, ibid.
to punish obstructors of lawful marriage, 1268, 13.
might apply some portion of a benefice for repairing houses, 1268, 17.
to be resident in Advent and Lent, and consecrate chrism on Maundy Thursday, 1268, 21.
in what case they might appropriate a benefice, 1268, 22.

*Bishops* to see that the vicar have a proper portion in impropriated benefices, 1268, 22.
and that there be a proper house for reception of visitor, in benefices impropriated to their own use, ibid.
to look to it upon instituting a clerk, whether he had not before one or more benefices, and how to proceed, 1268, 29.
not to collate to a benefice one who wants that order for want whereof the patron's clerk was rejected, ibid.
not to grant more than one commendam to one man, and how, 1268, 30.
elect, if a pluralist without dispensation, to be rejected, 1268, 31.
to defend their jurisdiction, 1268, 36.
to see that Othobon's constitutions be read in provincial synods, ibid.
to give account of pluralists to archbishop, 1279, 1.
devotions enjoined them for a deceased brother, 1279, 8; 1281, 26; 1486.
held yearly diocesan synods, 1281, 12.
to give letters patents of institution, 1281, 23.
to publish excommunications against violators of *Magna Charta*, 1298. Pf. Lat.
might give licence to marry in private, 1328, 8; and perhaps to marry without banns, 1347, 7.
to see that the money taxed and paid for dilapidations be truly expended, 1328, 9.
might license clerks to build on lay-fee, 1330, 8.
to regulate apparel of themselves and their domestic clerks, 1343, 2.
as also of their lay-servants, and to dismiss them if they exceed, 1463, 2.
to each but one riding apparitor, 1342, 9.
said to act as deputies to archbishop, 1391, Pf.
they were ordinaries even in exempt places, in case of heresy, 1408, 3.
might give leave to read Scripture translated, 1408, 6.
to certify archbishop of the enquiries, discoveries and proceedings, that they, &c., have made against heresies, 1416, 1.
diocesan's consent necessary to enable religious to alienate lands, 1444, 2.
to punish friars exceeding their privileges, 1466, 7.
bound to be resident in his church every Lord's day, 1222, 2.
*Bishoprics* to be ascertained, 1070, 9.
removed from villages to cities, 1075, 3.
two allowed to none, 1071, 1.
to be forthwith delivered to successor, 1107, Ps.
*Blind* obedience claimed by synod, 1408, Pf. and 8.
*Bolsters* forbid to be worn by clerks on their shoulders, 1463, 2.
*Boniface* the Savoyard, archbishop of Canterbury, his fury, 1261, *per tot.*
his constitutions read in synod, 1281, Pf. Lat.
his example commended by Peckham, 1279, Pf.

*Books*, none to be read but approved by twelve men chosen by universities, and allowed by archbishop, 1408, 5.
of Church service, which to be found by parishioners, 1250, 1; 1281, 27; 1305, 4.
*Bread*, holy, distinct from eucharist, 1236, 4.
*Bridegroom* knowing his bride before benediction, how, and why punished, 1343, 11.
*Burial* in churches forbid, 1071, 9.
Christian forbid to monks that had a concealed property, 1075, 2; 1200, 15.
and to strikers of ecclesiastics dying impenitent, 1138, 10.
to them who refuse penance to imprisoned malefactors, 1268, 2.
to them who fraudulently alienated their goods before death, 1343, 9. (where; see Lyndwood's evasion) 1347, 4.
to them who did not communicate at Easter, 1378, 4.
not to be allowed in another church to the detriment of the proper priest, 1102, 25.
not to be given for price or money, 1126, 2; 1138, 1; 1175, 7; 1200, 8.
not to be denied on pretence of fees, but a hint that if any be due it may be demanded afterwards, 1222, 27; 1336, 7.
*Burners* and breakers of churches, punished as violators of sanctuaries, 1268, 12.

C.

*Cah-slihte*, 1076, 4.
*Candle*, one at least to be lighted at every mass, 1322, 5. See Bells.
*Canons*, obligatory rules ecclesiastical.
[declared by our judges to be still binding, 1237, 13, notes h, and ¶.]
to fall under the canon is to incur excommunication, 1200, 10.
*Canon* of mass. See Secret.
*Canons*, or canonics, a sort of religious, less strict than monks.
to have no wives or women, 1076, 1; 1126, 13.
to be treated as priests in that case, 1108, 7.
their apparel regulated, 1200, 15.
some became chantry priests, but these were probably canons secular, 1362, 2.
of St. Augustin, to assemble in their general chapter, 1281, 16.
*Canterbury*, five if not six bishops consecrated there at once, 1107, Ps.
archbishop of York there to consecrate the proper archbishop, and to come thither himself for consecration, 1070, Pf.
the occasion of pope's bull against some of that diocese for not paying their tithes, 1200, 9, [note o.]
*Cap*, forbid to religious, 1200, 15.
with long tippet, forbid to all clerks, 1343, 2; 1463, 2. See Cope.
*Capias*, king's writ for taking up and imprisoning excommunicates, 1085, 1164, 10, 14.

*Capias*, if it were denied or evaded how prelates were to proceed, 1261, 4; 1343, 12.
*Catechising* and exorcising children in baptism, 1281, 3.
*Censures*. See Excommunication, Interdict, Suspension, Deprivation, Deposition, Subtraction, Suspension, *ipso facto*.
singular.
an assuming vicar to officiate no longer in that diocese, 1175, 12.
archdeacons neglecting publication of excommunications forbid entrance into church for one month, 1222, 26.
religious to have no new clothes the following year if they sell their old ones, 1222, 40.
denying offenders kiss of *pax*, and the holy bread, (not the communion,) 1236, 4.
simoniacal patrons disabled from being religious to fourth generation, 1236, 34.
clerks who wrote attachments against bishops disqualified for a benefice during the five following years, 1261, 1.
he that remains excommunicate a year uncapable of a benefice in this province, 1261, 3.
the same censure against an armed felonious clerk, 1268, 4.
commanding servants to leave their master when he stands in contempt of excommunication, 1261, 6.
bishop is suspended from wearing pontificals for conniving at simonists, 1268, 2.
from wearing dalmatic, tunic and sandals, for delaying to consecrate churches, 1268, 3.
for not prosecuting concubinary clerks, 1268, 8.
the archbishop is also laid under this censure if he neglect to reform the habit of clergy, 1268, 5.
clerk forfeits the sixth part of his annual income for unclerical habit, ibid.
they who have misbehaved in a church forbid entrance into that church, 1363, 2.
priests' concubines are forbid the sacrament at Easter, 1268, 8.
prelates suspended from instituting or collating for not executing the tenth of Otho, 1268, 9.
he that instituted to a full church suspended from instituting till the lawful possessor is restored, 1268, 10.
the intruding clerk is for ever unqualified for that benefice where he would have intruded, ibid.
prelate is suspended from collating for having made partition of a benefice, 1268, 11.
clerk violating sanctuary uncapable of benefice for five years, 1268, 12.
advocate for falsifying proxy disabled for benefice, 1281, 13.
fraudulent clerk disabled from the benefice he aimed at, 1281, 14.
prelates forbid entrance into church for not paying the doubles of fees extorted for probate of wills, 1342, 6.

*Censures*, he that fraudulently gives away his goods not to have Christian burial, though absolved before death, 1343, 9.
deans rural to fast every Friday in bread and water till they publish the constitution against concubinary priests, 1279, 5.
bishop suspended from wearing dalmatic for restoring benefices fraudulently resigned, 1268, 32.
*Cephas* said to signify a head, 1408, Pf. Lat.
*Chalices* not to be of wax or wood, 1071, 16.
but of gold or silver, 1175, 16.
of silver, where there is a sufficiency, 1195, 9.
of silver, and the other vessels decent, 1222, 11.
*Chamberlain*, loses his place if he takes money for the new clothes of the religious, or gives money for the old ones, 1222, 40.
*Chancel*, [to be fitted with desks and benches, 1250, 1. *Addenda*, p. 178.] is to be repaired out of the fruits of the benefice, 1268, 17.
archdeacon is to have a particular eye to it in his visitation, 1322, 6.
*Chantry-priests*, such as had annual salary for singing mass at some lesser altar of a church, or in an oratory for some particular family, or persons quick or dead, 1444, 1. See Chaplains.
*Chapels* not to be erected without bishop's licence, 1102, 15.
why so called, 1188, [notes a and *.]
they who officiate in them not to lessen the rights of mother church, 1268, 16.
if they are not consecrated mass not to be said there [without licence,] 1342, 1.
*Chaplain* may signify any officiating priest, though rarely a rector, [1261, 20, notes d and ‡.]
priest that officiated in a nunnery, 1222, 37.
curates and assisting priests promiscuously so called, and tied to the salary of six marks, 1347, 1.
that is, curate, was enabled to censure detainers of tithes, 1236, 35.
and fined forty shillings if he permit a friar to exceed his commission in preaching in his church, 1466, 7.
and required to publish general excommunications, 1298, 3.
that is, assisting, or mass-priest, was accountable and took an oath of fidelity to the incumbent or his curate, 1305, 5.
such chaplain was not to officiate if he came from another diocese till he had shewed letters of orders, &c., 1408, 9.
they were annual, yet not to be removed without cause, 1236, 25.
*Chapter*, [archidiaconal, two each year, 1279, 3.]
rural, assembly of the clergy of a deanery, the dean or archdeacon presiding, [four principal ones every year, 1279, 3.]
offenders to be first admonished in the face of this assembly before they are brought to purgation, 1195, 19.
[*Chasuble*, the principal vestment at mass, 1250, 1, note ‡, p. 177.]
*Chester*, the bishop's see translated hither from Lichfield, 1075, 3.
*Chichester*, the bishop's see translated hither from Seolsey, ibid.

*Child*, foundling, with or without salt to be baptized, 1195, 5. See Baptism.
of clerk, whether it was legitimate, 1237, 15.
unbaptized not to lie in holy ground, 1237, 14; 1279, 4.
*Choppe-Churches*, 1391.
*Chrism* and oils, their distinction, use, and abuse, 1279, 6.
no money to be given for them, 1126, 2; 1138, 1; 1175, 7; 1200, 8; 1237, 2; 1268, 2; 1222, 27.
[yet money was given, 1138, 1. *Addenda.*]
to be kept under lock, 1236, 9; 1322, 3.
*Chrismatory*, 1250, 1.
*Christianity*, what it signifies with the canonists, 1195, Pf. Lat.
*Chrysom*, the white cloth put on the new baptized child, [1223, 1, note ‡.]
how it was to be disposed of when old, 1233, 16.
*Churches*, monastic, collegiate, and parochial, not properly so called before consecration, 1237, 1.
their goods ought not to be invaded, 1070, 11.
goods taken from them by Conqueror's soldiers to be restored, 1072, 13.
supplantation of them forbid, 1076, 6.
not to be bought and sold, 1102, 14; 1127, 1.
not to be consecrated till it and priest be provided for, 1102, 16.
not to descend by inheritance, 1126, 5.
not to be built without bishop's licence, 1138, 12.
belonging to the king, not to be impropriated without his grant, 1164, 2.
ought not to protect convicted clerks, 1164, 3.
nor chattels of criminals, 1164, 14.
pleas of blood and bodily punishment ought not to be held there, 1175, 6; 1222, 9.
the repairs thereof to be taken care of, 1195, 7.
not to be charged with new pensions, 1200, 8.
some not worth above three marks per annum, 1200, 10.
[none to be instituted to them who will not serve in person, ibid.]
religious held some by an absolute right, 1200, 14.
those not worth above five marks per annum to be given to none but such as will reside and personally officiate, 1222, 15.
to be consecrated within two years after they are built, 1237, 1; 1268, 3.
not to be pulled down in order to be rebuilt without bishop's consent, 1237, 1.
what ornaments and repairs to be found by parishioners, 1250, 1; 1305, 4.
markets not to be kept in them, 1268, 34; nor plays, 1363, 1.
church's portion out of defunct's goods, 1261, 15; 1343, 7.
all disorderly keeping of vigils (perhaps wakes) and exequies there forbid, 1363, 2.

*Churches*, arrests and assaults not to be made there, especially not in St. Paul's, London, 1463, 1.
often signifies the whole monastery, college or parsonage, with its whole endowments, viz., 1102, 14; 1127, 1, 9; 1195, 16; 1200, 8, 15; 1222, 46, 49; 1138, 5.
for parsonage, it may not be let to farm but with bishop's consent, and that not for life, 1222, 49; 1237, 9.
if farmed otherwise, the contract null (especially if farmed to patron) and a third of the yearly profits forfeited to cathedral, 1268, 20.
this last constitution reinforced with additions, 1343, 3.
may be farmed only to clerk, but a portion reserved for poor, 1281, 15.
rates or assessments upon outdwellers and religious as well as others, 1342, 4 (the second of those so numbered.)
*Churchwardens* as guardians of the building, the rise of them, 1322, 6.
as presenters of scandals, or *testes synodales*, the rise of them, 1416.
*Churchyards*, the parishioners not to cut down what grows there, because it belongs to the priests, 1138, 11; 1343, 14.
priests not to fell the trees there without cause, 1279, 12.
*Citations*. See Summons and Apparitors.
*Clarendon*, the articles there made, said to have been renewed at Northampton, and confirmed by Hugo, the pope's legate, 1175, Ps.
*Clergymen*, or clerks, sometimes including priests, deacons, and subdeacons, (who are called clerks in holy orders,) but often those of the four inferior orders only, or bare psalmists.
not to bear arms, 1070, 12; 1138, 13; 1175, 11.
foreign, not to be received or ordained without letters from proper bishop, 1071, 3; 1075, 4; 1076, 2.
in holy orders to live chaste or desist from office, 1071, 15.
to pay no new secular service for benefice, 1076, 3.
their penance for fighting for the conqueror, 1072, 5.
not to be reeves or judges, in causes of blood, 1102, 8; 1222, 8.
such as had deserted their function to return, 1102, 11.
sodomite to be admitted to no higher order, 1102, 28.
beneficed, yet refusing holy orders, to be deprived, 1126, 6; 1127, 4; 1138, 6.
ordained by improper bishop suspended till restored by pope, 1138, 7.
liable to be prosecuted for the same crime in both courts, 1164, 3.
sons of tenants in villainage not to be ordained without [consent of lord,] 1164, 16.
whether when criminous to be degraded and delivered to secular court, 1164, Ps.
in holy orders dwelling with wives not to be beneficed, 1175, 1.
not to succeed father in benefice, 1102, 7; 1175, 1; 1237, 15; 1281, 22.
their hair, if long, to be clipped by archdeacon, 1175, 4; 1195, 10.
forbid to trade or farm, 1175, 10.
to be decently habited, 1175, 11.

*Clergymen*, pope's legate consented that they should be arraigned for hunting in king's forests, 1175, Ps.
carefully to preserve their tonsure, 1195, 10; 1261, 5; and habit, 1237, 14; 1268, 5.
not to go to taverns, &c., for fear of quarrels, and men's incurring penalty of beating clerks, 1200, 10.
by beating clerk excommunication *ipso facto* incurred, ibid.
beneficed, to be no way instrumental in putting to death, 1222, 9.
not to build on lay-fee for concubines, &c., 1222, 34; 1330, 8.
forbid all drinking at equal draughts, and scot ales, 1236, 6.
not to farm benefices for above five years, 1237, 8.
intruding into benefice by force, or lay authority, how treated, 1261, 3.
seized by laymen without bishop's leave to be surrendered on demand, 1261, 5.
not to pay amercements laid by a lay power, ibid.
being canonically purged not to be taken up by lay power, ibid.
*Clerks* and laics, might implead each other for breach of oath or covenant in ecclesiastical court, 1261, 6.
lost their privileges if they wanted the tonsure, 1261, 20.
worthy of death made prisoners for life, 1261, 21.
that carried the holy water pot, how to be chose, 1261, 22.
bearing arms, and felonious, to make satisfaction at bishop's discretion, 1268, 4.
in causes of blood not to be advocate, judge, or associate, 1268, 7.
upon institution was to swear he would resign all former benefices held without dispensation, and not doing so deprived *ipso facto*, 1268, 29.
convict, not to be too easily purged or enlarged, 1279, 10.
their habit regulated, 1237, 14; 1268, 5; 1347, 5; 1463, 2.
not to be detained by seculars, though bigamists, between 1308 and 1322, No. 5.
ordained in Wales not to officiate here [without letters commendatory,] 1322, 1.
being presented to a benefice filled, and bringing *quare impedit* against bishop in king's court, censured, 1342, 13.
their wills to be executed, 1343, 8.
complaint of king, parliament, &c., against criminous clerks, and their easy treatment, and regulation thereupon made, 1351.
bigamist, and married, lost all privilege, except, 1415, 2.
and could have no office in ecclesiastical court, ibid.
*Clerkship*, what, 1261, 5; between 1308 and 1322, No. 5.
*Coal*, (*carbo fossilis*,) tithe of it required to be paid in the North, 1466, 11.
*Coif*, the use of it forbid to clerks, and why, 1268, 5; 1281, 21.
*Collation*, [explained from Lyndwood, 1222, 1, note §, p. 102.]
[distinguished from institution and induction, 1222, 3, note *, p. 104.]
null when bishop collates clerk wanting that order for want of which the patron's clerk was rejected, 1268, 29.

*Collation* to benefices not rightly filled allowed, 1342, 13.
*Collets* or acolyths, 1250, 1.
*Commendam* nulled (without pope's dispensation) except of one benefice only, and for one year, and to a priest, 1268, 30; 1279, 1, 2.
*Commissaries*, that is, sub-officials, not to determine matrimonial causes, especially as to the contract, 1347, 6.
and to give sentence in chapter only, ibid.
*Commutations*, not more than twice accepted from the same person, 1342, 10.
*Concelebration* of masses, 1279, 8.
*Concubines* of priests, canons, beneficed clerks, or of clerks in holy orders, drove out of parish, seized, brought under penance or servitude, 1127, 7.
expelled from church and sacraments, 1222, 31.
what clerks left them by will to be applied to Church, 1222, 32.
either to marry, go into a cloister, or do public penance, 1236, 4.
if they refuse all three, first to be denied the kiss of *pax* and the holy bread, and if they are not so reduced to be excommunicated, &c., 1236, 4.
*Confession*, to be denied to none, 1268, 2. See Penance.
how often to be made, 1378, 4.
*Confessor*, to be settled by bishop, and archdeacon to give penance to priests and in reserved cases, 1222, 19; by bishop, 1237, 5; 1322, 10.
none to absolve violators of liberties and pluralists without bishop's licence, 1281, 6.
to whom clergy were to confess, 1281, 8; 1322, 10.
rules in doing their office, 1322, 8.
to disclose no crime confessed to them, 1322, 9.
to confess women without the veil, 1378, 3.
not to absolve obstinate pluralists, 1279, 1.
*Confirmation*, none who had not received it were capable of the communion, 1281, 4.
fathers and mothers of old not allowed to be sponsors at receiving it, and if they were, the marriage dissolved, 1322, 2.
the manner of preparing for it and receiving it, &c., ibid.
*Consecration* of churches not to be performed till they and the priests are well provided for in all respects, 1102, 16.
no fees to be demanded for it, 1126, 3; 1138, 3, 4; 1175, 7.
but usual procuration allowed, 1138, 3.
to be performed within two years after the church is finished, 1237, 1; 1268, 3.
*Contract* of marriage, hypothetical, imposed on fornicators after a third relapse, 1308. See Marriage.
*Convocation*, when lower clergy became a part of it, 1298, Pf. Lat.
*Cope*, the uppermost garment of the bishop and priest at mass, being a sort of cloak or mantle; [this statement corrected, 1250, 1, note ‡, p. 177. See Chasuble.]

*Cope*, the bishop is forbid to demand one as a fee for consecrating churches or bishops, 1126, 3; 1138, 3.
*Cope, close*, the canonical habit for all priests without the church, though never received by the generality; it enclosed the whole body and head; enjoined, 1222, 30; 1237, 14; 1268, 5.
*Copes* with sleeves forbidden to undignified priests, 1195, 11.
allowed to archdeacons and dignified priests, ibid.
only black monks, &c., obliged to use black copes, 1200, 15.
red and green the only colours forbid to clergy, 1222, 30.
*Corpses* not to be buried in other parishes to detriment of the proper priest, 1102, 25.
sanctity not to be attributed to them without bishop's leave, 1102, 26.
*Corrodies*, liveries, stipends or pensions, how to be granted by religious, 1222, 38; 1444, 2.
*Council*, [distinguished from synod, 1219, 12, note ‡, p. 268; 1328, 6, note ‡.]
general, how many bishops used to represent the Church of England there, 1416, Pf.
*Creed* explained, 1281, 9.
*Cross* supposed to be seen in the air, 1188, Pf. Lat.
of different colours taken by each nation, ibid.
why more honoured than the ass which bore Christ, 1362, 3, [note m.]
to preach against the adoration of it deemed heretical, 1408, 8.
*Crown*. See Tonsure.
*Cup* in the eucharist, though of unconsecrated wine, given to the people; and reasons why sacramental blood was not allowed them, 1281, 1.
*Curates* may grant licence to their parishioners to be married in another church, 1343, 11.
qualified priests obliged to leave their chantries, and other places, though more profitable, and to take curacies, 1347, 1; 1362, 1, 2.
their salary increased, 1362, 2; 1378, 1.
perpetual, are by law licensed to preach in their own churches, 1408, 1.
deacons may be curates, ibid., [note.]

## D.

*Date* of time and place to be inserted in instruments, 1237, 28.
*Deacon*, not to be ordained without professing chastity, 1076, 1.
to keep no woman but [such as are near relations,] &c., 1108, 1; 1126, 13; 1127, 5.
to make purgation by four, priest by six men, 1108, 4.
forfeited goods for incontinency, 1108, 10.
ordained without title, not to enjoy the honour of his order, 1126, 8.
not to give baptism, penance, or eucharist, but in necessity, 1195, 6; 1223, 1.
ordained without title, to be kept by the bishop if he want, 1200, 6.
might be curate, and preach as such in his own church, 1408, 1, [note.]

*Dead*, night-watches over their corpses regulated, 1343, 10. See Annals, Trentals, Masses, Priests, Burial, &c.
*Dean*, sometimes signifies head of a religious house.
must be a priest, 1126, 7; 1127, 4.
to take oath that he will not connive at concubinacy, 1108, 8.
forfeits if he refuses, ibid.
sometimes signifies the head of a religious house, having ecclesiastical jurisdiction within certain parishes or districts, by custom or privilege.
they are forbid to farm out their jurisdiction, 1237, 7.
nor to conclude matrimonial causes without consulting the bishop, 1237, 23.
must have a seal, 1237, 28.
sometimes denotes him that was afterwards called official, then he was styled *Decanus Christianitatis*, but I find no mention of this title in any of our constitutions.
[of the arches, 1222, 20.]
rural, was the president in the chapter of rectors and vicars within the district still called a deanery, and who inspected the behaviour of the clergy and people within the same, and exercised jurisdiction in matters delegated to him by the bishop, archdeacon, or their substitutes.
they were to admonish the defamed, first privately, then before the chapter, before they were brought to purgation, 1195, 19.
with how many horse and men to visit, 1200, 5.
not to demand aids or subsidies of their clergy, 1200, 5; 1222, 25.
not to meddle in matrimonial causes, 1222, 20.
had been confessors to their several deaneries, but this was found inconvenient, 1237, 5.
citations were often committed to their care, 1237, 26; 1268, 25.
they were found guilty of abuses in this point, which were reformed, 1281, 12.
were obliged to have a seal of office, 1237, 28.
*Deanery, rural*, in every one to be two or three informers against excesses of prelates and clergy, 1236, 17.
and against men heretically inclined, 1416, 1.
*Debts* due on faith given [to clergymen], the cognizance of them claimed by ecclesiastical courts, 1261, 6.
but denied to be of ecclesiastical jurisdiction, 1164, 15.
*Dedications*. See Consecrations.
*Defamed* for any crime, how he is to be treated, 1195, 19; 1200, 12. See Purgation.
*Deposition* for bearing arms or indecent habit, 1175, 11.
for going to taverns, &c., 1175.
that is, death of the man, nativity of the Saint; John of Beverley's, 1416, 2. See Feasts.
that is, degradation of priests, deacons, and subdeacons, for keeping women, 1236, 3; 1126, 13; 1127, 5.

*Deposition* for usury, 1126, 14.
for simony, 1127, 1.
to heads of religious houses for exceeding in number of monks or canons, 1222, 42.
to priests for disclosing confessions, 1322, 9.
*Deprivation* both of office and benefice for keeping of women, 1108, 5; 1200, 10; 1175, 1; 1127, 5; 1138, 8.
of beneficed clerks for refusing to be ordained to the superior orders, 1126, 6; 1127, 4.
to clerks that were usurers, or engaged in secular offices, 1138, 9.
to clerks who being suspended for their incontinence did yet officiate, 1236, 3.
to superior clergymen that sat judges in blood, 1175, 3.
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to him who did not reside and personally serve cure of no more than five marks per annum, 1222, 15.
for alienating lands, 1222, 33.
to bishops and others who connived at clerks officiating during their suspension for incontinence, 1236, 3, 4.
to such as demanded money for giving penance, 1237, 4.
to vicars for not being ordained priests, 1237, 10.
to such as endeavoured to retain both church and wife, 1237, 15.
to such as meddled with ecclesiastical matters while suspended, 1237, 16.
to son that had succeeded to his father's benefice, 1237, 17.
to clerks that violated sanctuaries, 1268, 12.
to pluralists without dispensation, 1268, 29; 1279, 1.
to pluralists who opposed the loss of all benefices but the last, 1279, 1.
*Dice*, forbid to them that engaged in the crusade, 1188, 5.
*Dilapidations* said to be a debt, but due out of the predecessor's ecclesiastical estate only, 1236, 22.
to be made good out of the estate of the church, while filled with the incumbent, 1268, 17.
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["*Diocese*, when first used in England for a bishop's district, 1138, 4."]
*Dispensations* granted by the pope.
for bastards being admitted to orders, and for clerks to officiate though ordained by an improper bishop, 1236, 37.
for plurality of benefices without limitation, 1237, 13.
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for commendams, 1279, 2. See Pope, and Irregularity.
*Distributor*, 1281, 20.
*Donation* of goods before death, whereby the donor is made insolvent, null, 1343, 9.

E.

*Ecclesiastics*, that is, bishops, clergy, monks, canons, nuns.
not to sit judges in causes of blood, 1075, 9, *et passim*.
to take nothing to farm, 1127, 8.
on what terms they might alienate lands, 1222, 33.
to plead no other right to their lands, &c., in secular courts, but length of possession, 1261, 12, 13.
*Ecclesiastical* courts.
cost given in them against clerks cast in pecuniary causes, 1175, 13.
no pay there to be taken for doing justice, 1195, 12.
their method of proceeding on common fame, 1195, 19 ; 1200, 12.
to give mutual assistance in case of absconding criminals, 1328, 3.
their acts null, if bigamous married clerks, or laymen, have any hand in them, 1415, 2. See Ordinaries, Advocates, Proctors, Seals, &c.
*Edmund Rich* of Abindon, archbishop of Canterbury, very scrupulous, offended both king and prince, therefore forced to leave his country, and died abroad ; afterwards canonized, 1236, Pf.
*Edward*, king and confessor.
secular service paid by churches in his time to continue, and no other, 1076, 3.
I. since the Conquest, an arbitrary prince, 1298, Pf.
III. desires general excommunications to be published, 1343, 1.
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*Egelwine*, bishop of Durham, his behaviour upon the Conquest, 1070, Pf.
*Election* of prelates, how to be made, 1164, 12.
that they should be free, 1222, Pf.
*Eucharist*, carefully to be reserved, but not above eight days, and carried to the sick by priest, or deacon, if it may be, 1138, 2 ; 1236, 21.
not to be sopped, 1175, 15.
tabernacle, or canopy made for it in every church, how pompously carried to the sick, and adored by people, 1279, 7 ; 1281, 1.
how often to be received, who to be repelled from it, 1378, 4.
when men were advised not to receive it, ibid.
*Exchange*, of benefices not to be made but on oath given, that there was no fraud, 1391.
*Excommunication*, against monks that threw off their habit, 1071, 12.
against laymen not appearing at third summons, 1076, 4.
against deserting clerks and monks refusing to return, 1102, 11.
against sodomites, 1102, 28.
against priest that celebrated while he kept a woman, 1108, 6.
against them who ejected priests without bishop's consent, 1126, 9.
against them who received excommunicates to communion, 1126, 11.
against practisers and approvers of sorcery, 1126, 15.
for selling a church, 1127, 1.
for hindering priests' concubines from being seized, 1127, 7.
for demanding money for chrism, sacraments, &c., 1138, 1.

*Excommunication* against impenitent spoilers of church's goods, 1138, 11.
against clerks obstinately unconformable in hair and apparel, 1175, 4.
not to be passed without warning, 1200, 7; 1222, 26.
against monks that had property, 1200, 15.
against clerks' concubines, who did not submit upon ejection from church and sacraments, 1222, 31.
to be passed by priests against detainers of tithes, 1200, 9; 1223, 10; 1236, 35.
against intruding clerks, 1261, 3.
against great men causing intrusion, 1261, 3.
against such as brought prohibitions from secular court to ecclesiastical, 1261, 6.
against such as obstructed ecclesiastical proceedings against Jews, 1261, 7.
against seizers of ecclesiastical goods and lands, 1261, 9.
against such as took clerks' goods for king at their own price, 1261, 10.
against wasters of prelates' lands in a vacancy, 1261, 11.
against distressors of bishops for not personally appearing in king's courts, 1261, 12.
or for not allowing their liberties to be tried by juries, ibid.
against temporal judges, who denied that "all" included whatever was now enjoyed, or that a privilege granted, though not used, was in force, 1261, 14.
against lords and others, hindering administration of goods, and executing of wills, 1261, 15.
against them who made suggestions to king's courts against ecclesiastical, 1261, 16.
against them who refused oath or penance imposed by ecclesiastical courts, and their protectors, 1261, 17.
against those who denied confession to malefactors, 1261, 18.
against confessors that absolved pluralists, 1279, 1.
against advocate getting a false proxy, 1281, 13.
against stipendiary priest intercepting his principal's offerings, 1305, 5.
against laymen that obstructed offerings or tithes, 1328, 7.
against clerks accepting benefice from lay hands, 1330, 7.
against molesters of tithe takers, 1343, 4; and obstructors of wills, 1343, 7.
against such as watched by night over corpses, 1343, 10.
against such as kept scot ales, or drinking bouts, 1367, 2.
against them that read Scripture in mother tongue without bishop's leave, 1408, 6. See *Ipso facto*.
*Excommunications*, general, denounced solemnly, with candles lighted and bells tolling, in council against all that should violate the provisions there made, 1143, Ps. Lat.; 1222, 1.
against those who denied to pay tenths for crusade, 1188, 1.
against false swearers every Lord's day, and three times a year with bell and candle, 1195, 17.

*Excommunications, general*, are mentioned, and thereby men are said to be excommunicated without warning, 1200, 7.
made by archbishops and bishops in king's council at Westminster upon the renewal of *Magna Charta* in King Edward I.'s reign, (as at the first granting it in King Henry III.'s reign) 1298, Pf. Lat.
["the impropriety of general excommunications," 1222, 1, note a.]
these excommunications to be denounced by bishop in every cathedral, by priest in every parish church, every Lord's day after every rural chapter, 1279, 3; or however four times a year, 1222, 1, [note f.]; [three or four times,] 1330, 10; [four times,] 1343, 1; twice a year [in cathedral churches,] 1298, Pf.
this practice was restored after long disuse, 1434.
obstructors of ecclesiastical jurisdiction to be four times denounced excommunicate in every church every year, 1343, 12. See Publications in churches.
to be passed and excommunication already passed, the difference between them, 1261, 8; bell and candle used in the former case, 1236, 36.
the less, for communicating with excommunicates, 1298, 3.
*Excommunicates* in worse condition than they who were only repelled from church and sacraments, 1222, 31.
when they are said to be in contempt of excommunication, 1222, 1.
after prohibition against conversing with them published, they who conversed with them incurred the greater excommunication, 1236, 20; 1298, 3; 1408, 1.
taken up and escaping, how treated, 1261, 4; 1343, 13. See *Capias*.
how the sentence was to be aggravated against them, 1261, 4.
if for heresy their goods were to be seized, 1408, 1.
not to give security for the remainder, but only for satisfaction in the present case, 1164, 5.
*Exemption* of monks and clerks from bishop's jurisdiction, forbid, 1070, 6.
yet by power of pope or king, or both, some churches are said to be held by an absolute right, 1200, 14.
therefore such exempt prelates said to have episcopal jurisdiction, 1466, 7.
instead of being commanded, they are requested to pay their devotions for deceased bishops, 1279, 8.
friars, by virtue of papal exemption, could take the confessions of any people at discretion, 1281, 6.
[*Exequies*, what, 1343, 10, notes c and ‡.]

F.

*Falsarians*. See Forgers.
*Feasts* to be kept with cessation from labour, 1328, 1.
of the power of enjoining feasts to be kept, 1328, 2.
new holidays did not always imply a new service, 1398, 1416, 1.

*Feasts*, number of them complained of, and feasts of obligation specified, 1362, 3; feasts with nine lessons, 1367, 3.
state holidays called *Feriæ repentinæ*, 1281, 9, [note g, p. 287.]
occasionally mentioned or enjoined.
["of the Holy Trinity, 1268, 35, note u;"] St. Anne, 1391, Pf.; Annunciation of the Virgin Mary, 1328, 2; St. Chad, 1398, 1415; Conception of the Virgin Mary, 1328, 2; St. David, 1415, 1; St. Dominic, 1237, Pf.; St. Edward the king, ibid.; St. Edward, king and confessor, 1445; St. Francis, 1237, Pf.; St. George's feast (to be observed as Christmas-day), 1415, 1; St. John of Beverley, whose tomb was said to sweat during the battle of Agincourt, 1416, 1; Thomas of Canterbury, 1164, Ps.; a commemoration of him to be every Tuesday, 1398; St. Winefride, 1398, 1415.
*Fees* stated for letters of orders, institution, induction, 1342, 2.
for probate of wills, 1342, 6. See Chrism, Sacraments, Burial, &c.
[*Fidelis*, one under an oath of fealty, 1237, 18, note ‡.]
*Flesh* not to be eaten by monks except ———, 1237, 19.
*Font*, baptismal, to be of stone, and decent, 1223, 1; 1236, 9, 10.
to be kept under lock and key, 1236, 9.
the baptismal water not to remain in it above seven days, 1236, 10.
the water in which private baptism was given, to be poured into the font or fire, ibid.; [1223, 1.]
*Forgers* of instruments or seals, their penance, 1237, 27.
bishops and archdeacons charged with this crime, if they do not give archbishop a true account of pluralists, 1279, 1.
*Fountains* not to be reverenced without bishop's consent, 1102, 26.
*Friars* in great request, 1279, Pf.
cautioned to preserve their chastity, 1279, 11.
their impudence in confessing and absolving people, 1281, 6; 1466, 7.

## G.

*Geoffrey*, archbishop of York, how treated, 1195, Ps.
imposed upon by the Sabbatarian frauds of abbot Eustace, 1201.
*George Nevil*, archbishop of York, had King Edward IV. his prisoner, 1466, Pf.
*Gilbert*, bishop of Rochester, accompanied Archbishop Baldwin into Wales, and preached marvellously, 1188, Ps. Lat.
*Girard*, archbishop of York, allows of investitures, 1107, Pf.; yet swears obedience to Anselm, 1107, Ps.
*Good-Friday*, or preparation-day, to be kept festivally, 1328, 1.
*Gown*, first mentioned as clergymen's apparel, 1463, 2.
*Guardian* of the temporalities of prelacies during vacancy, an office assumed by King William I., 1070, Pf.
King Stephen promised the clergy or monks of the church should have this privilege, 1138, 11.

*Guardian*, of temporalities of prelacies, during vacancies, asserted to belong to king, as his demesne did, 1164, 12.
ravages committed by this occasion, to be satisfied by officers that committed them, 1261, 11.

H.

*Habit* of clergymen. See Copes, close.
it might be of any colour but red and green, 1222, 30.
and the accoutrement of their horses to be decent, 1237, 14 ; 1268, 5 ; 1281, 21 ; 1463, 2.
most at large, 1343, 2 ; officiating habit, see Mass vestments and Surplice.
*Hair*, long, forbid to priests, and a clipped crown enjoined, 1222, 30. See Tonsure.
*Henry* I., king of England, asserts his right of investing bishops and abbots, but is at last obliged to a compromise, 1102, Pf., 1107.
eludes the canons which himself had approved against married clergy, 1127, Ps.
[laws ecclesiastical of, why omitted, 1085, *Addenda*.]
of Blois, bishop of Winchester, legate *a latere*, held several synods in that character, asserted right of choosing kings to be chiefly in the clergy, introduced the practice of appeals to Rome, 1143.
II., king of England's dispute with Becket, 1164, Pf.
satisfaction promised by him, 1164, Ps.
gave up all customs against Church introduced in his time, 1164, Ps.
consults with the king of France concerning the crusade, and exacted a tenth of all men's goods towards it, yet drops the design, 1188, Pf. Lat., and Ps.
III., king of England, obsequious to the pope, and fond of legates, 1237, Pf.
offers a legate his castles to imprison ecclesiastics who refused to grant tenths to the pope, 1298, Pf.
V., king of England, desires that John of Beverley's day be kept, 1416, 2.
VI. receives a golden rose from the pope, 1446.
*Heresy* was any thing contrary to the pope's decrees or decretals, or to the constitutions provincial, 1408, 3, 8.
a man convict of preaching it a second time, to have his goods seized, 1408, 3.
he that translated Scripture, or read it when translated, without the bishop's consent, treated as a fautor of heresy, 1408, 6.
propositions that carry a sound of heresy, forbid, 1408, 7.
summary way of proceeding against them that were suspected of it, 1408, 10.
partiality with respect to the evidence, ibid., [note.]
three informers in every deanery sworn to present suspected persons, 1416.

*Heresy*, persons suspected of, such as were not delivered to be burnt, to be kept till next convocation, 1416.
[*Homicide*, irregularity caused by, 1236, 1, note n. and *, p. 130.]
*Hood*, mentioned as worn by prelates and graduates, 1463, 2.
*Host*, the sacrifice, or eucharistical bread.
["the elevation of it, 1071, note a."]
to be kept in a decent pyx, and renewed every Lord's day, 1195, 1 ; 1200, 2 ; 1322, 4.
to be carried to sick with a light and cross, 1195, 2 ; 1200, 2 ; 1322, 4.
to be given in private to no impenitent, 1200, 2.
to be given to all that offer themselves in public, so that their crimes be not notorious, ibid.
not to be kissed by priest before he received it, 1236, 32.
people not to grind it with their teeth, 1281, 1.
nor to receive it till they had first confessed to priest, ibid.
*Hubert Walker*, archbishop of Canterbury, was justitiary of England, but obliged by the pope to resign his secular power (yet was afterwards chancellor), visited York by legatine authority, 1195, Pf.
he held a provincial synod, notwithstanding the prohibition of the chief justice, 1200, Pf. Lat.
paid a singular regard to the pope, 1195, 1200, *per tot.*
*Husband* impleading his wife as too near akin, not to be regarded, 1126, 17.
neither he nor his wife to travel, without mutual consent publicly notified, 1200, 11.
*Husbandman* in field under Church's protection, 1143, 2.
*Hymns*, the use of them left at discretion, 1367, Ps.

I.

*Jews* forced to contribute to crusade, 1188, 8.
threatened with canonical punishment if they have Christian slaves, or build more synagogues, or do not pay tithes, &c., 1222, 51.
to wear a badge, and not go into a church, 1222, 52.
forced to stand to ecclesiastical judicature, 1261, 7.
*Immersion*, whether necessary, 1279, 4.
*Impropriation* of churches regulated, 1102, 21 ; 1200, 14 ; 1268, 22.
a portion out of every such church assigned to poor, 1342, 4.
*Incest*, solemn penance to be done for it, 1281, 7.
*Incestuous* marriage, and he who conceals it, how censured, 1102, 24. See Marriage.
*Inculcation* of orders, that is, giving or taking too many at once, forbid, 1281, 5.
*Induction*, no fee to be demanded for it, 1200, 8.
not to be delayed by archdeacon, &c., 1222, 4.
procuration allowed on this occasion, 1342, 3.

*Indulgences*, the beginning of them, 1188, 3.
to be granted with discretion, 1279, 9.
granted to them who prayed for the king, &c., 1359.
granted to encourage pilgrimage and procession, 1454.
the violent excess friars were guilty of in preaching them, 1466, 7.
*Infamy*, judicial, fixed on concubinary priests, 1108, 5; 1127, 5.
they who lay under this imputation, disabled from being witnesses, 1195, 18.
*Inquest* or jury of twelve men, to be panelled by sheriff, for trying men for crimes in ecclesiastical court, 1164, 6.
in king's court, to try whether lands were held in frankalmoin, 1164, 9.
concerning right of patronage, commonly held in ecclesiastical court, on vacancy of every benefice, 1222, 1; 1342, 13.
to be done before a full chapter, 1281, 14.
this or a like inquest determined the dilapidations, 1328, 9.
*Insinuation* of last will, that is, producing it in form before ordinary, 1328, 5.
[no fee to be demanded for that of a poor man, ibid.]
*Institution*, no fee to be demanded for it, 1200, 8.
allowed to none for benefices of three marks per annum, except they would serve in person, 1200, 10; [nor of five marks, 1222, 15.]
not to be delayed, 1222, 4.
of a procurator to a benefice, 1330, 8. See Fees.
*Interdict* on churches or lands, that is, a prohibition of divine service or sacraments, within any certain church or territory, unless of baptism, and now and then a mass said with a low voice, 1237, 1.
forbid to be laid on the king's tenants without his knowledge, either in regard to persons or lands, 1164, 7, 10.
both on churches, lands, and persons, is often ordered to be inflicted by Boniface in his constitutions, 1261, *per tot.*
on persons, is a prohibition to bishops, priests, and clerks, forbidding them to exercise their function: of these too Boniface gives us plenty, 1261, *per tot.*
they who died under it not to be buried, 1200, 14.
the pope gave the worst example, by laying an interdict on the whole kingdom because King John refused to receive Langton for archbishop of Canterbury at his command, 1222, Pf.
on church, clergy and people, that let one unauthorized preach, 1408, 2.
upon churches remaining two years unconsecrated, 1237, 1.
upon chapel, till they who retain to it consent to pay to the repairs of the mother church, 1466, 8.
not to be passed without warning, 1222, 26.
difference between excommunication and interdict at large, ibid.
*Intestates*, what part of their goods to be applied to pious uses, 1261, 15.
their goods [not to be seized by prelates or others, 1268, 23.]
how to be distributed, 1343, 8.
alienating their goods before death, how censured, 1343, 9; 1347, 4.

*Invaders* of manors, granges, or lands of ecclesiastical persons, how censured, 1268, 12.
*Inventory* of goods to be exhibited before executors or administrators begin to act, 1261, 15; 1268, 14; 1343, 7.
*Investitures* of great prelates by the king's giving them pastoral staff and ring, opposed by Anselm, and compromised by king and him, 1107, Pf.; 1107.
to abbacies, to be given by bishops, 1138, 5.
*John* of Oxenford, the king's chaplain, presided in the state council at Clarendon under the king, 1164, Pf. [Lat.]
*John Peckham*, friar, archbishop of Canterbury, his spirit, 1279, Pf.
his revocation of some articles of general excommunication, 1279, 3.
his forbidding the people of his province to sell victuals to his rival of York, ibid. [*Addenda.*]
his homily and excommunications used here, 1408, 1.
and received by convocation of York, 1466, 1.
*John Wickliff*, the great prevalency of his doctrine, and the condemnation of his books, 1408, 5. [See Heresy.]
*Ipso facto* excommunication, the nature of it, 1391.
against those who accused and molested innocent clerks, 1261, 5.
against armed felonious clerks, 1268, 4.
against invaders of manors and granges of ecclesiastical persons, 1268, 12.
against violators of sanctuary, ibid.
prelate that refuses to give the poor what he took for obstructing peace, excommunicated from the time he committed the crime, 1268, 27.
against all pluralists wanting dispensations, 1279, 1.
against such as hindered the reading of Othobon's constitution against concubinary clerks, 1279, 5.
against clerks thrusting themselves into filled benefices by the king's writ, 1342, 13.
against laymen intercepting oblations, 1343, 6.
against fraudulent executors, 1343, 7.
against contractors of suspected marriage, and all that were conscious, 1343, 11; 1363, 4.
against violators of sequestration, 1343, 15.
against those who outlawed men, by putting them in a false county, 1343, 16.
against fraudulent tithe-payers, 1347, 3.
against priests that give or take more than appointed salary, 1378, 1.
against those who break constitution about preaching, 1408, 1, 2.
against such as defended a proposition, carrying a sound of heresy, till they recanted, 1408, 7.
against officials, that were either bigamous or married clerks, or laymen, 1415, 2.
against users of auncel weight as infringers of *Magna Charta*, 1430.
against those that made arrests or assaults in churchyards, 1463.

*Ipso facto* deprivation from office and benefice, against married or concubinary clerks, 1237, 15, 16.
against intruding clerks, 1261, 3.
against armed felonious clerks, 1268, 4.
against concubinary priests not reformed by suspension, 1268, 8.
against archdeacons refusing to pay doubles of their exactions, 1342, 6.
against chaplains taking more than six marks salary, 1347, 1.
*Ipso facto* suspension from office and benefice, for taking secular jurisdiction, 1268, 6.
suspension for ever against abbots alienating lands, 1444, 2.
from office and benefice, against prelate delegating jurisdiction to unqualified clerk or layman, 1415, 21.
against prelate collating a new clerk on bare report of the former's death, 1268, 11.
suspension from office for unclerical habit, 1268, 5.
against clerks concerned in causes of blood, 1268, 7.
against advocates guilty of subornation, 1237, 29.
*Ipso facto* suspension from entrance into church.
against complices in fraudulent donation of goods, 1347, 4.
against clerks giving acquittance to executors before accounts, 1342, 6.
*Irregularity*, what it was, and how to be cured, 1236, 1.
incurred by stipendiary priests officiating in manner forbidden, 1305, 5.
incurred by a male child twice confirmed, 1332, 2.
no priest ought to absolve him that is under this censure, 1363, 5.
if contracted by murder the pope cannot absolve him by his regulated power, but by his plenitude only, 1236, 1.
contracted by marrying two wives not by having several whores, 1415.
*Jury*. See Inquest.

## K.

*King*, his consent not thought necessary for translating sees, though in some cases proper, 1075, 3.
mass might be said in his chapel though not consecrated, 1342, 1.
his court, to bring them that were contumacious against bishops to satisfaction, 1085.
but not to meddle with the episcopal law nor ordeal, ibid.
not to invest bishops or abbots by pastoral staff and ring, 1107, 1.
but to have homage from them before consecration, 1107, 2.
he and his great lords requested to be present at synod, 1102, Pf. Lat.
and were present, 1108, Pf. Lat.; 1175, Pf. Lat.
his consent necessary to the impropriation of benefices within his own lands, 1164, 2.
archbishops and bishops not to depart the kingdom without his leave, 1164, 4.

*King*, his tenants and officers not to be censured in ecclesiastical court, without application first made to him, 1164, 7.
appeals to end in him, and be finally concluded on a re-hearing in the archbishop's court, 1164, 8.
to assist, and be assisted by bishops against great men, 1164, 13.
chattels of criminals, though lodged in church, belong to him, 1164, 14.
pleas of debt, though on faith given, belong to him, 1164, 15.
being present in synod, ratifies one single canon, 1175, 9.
if he commanded prelates to lay before him their proceedings in ecclesiastical court, they were to answer, they could not obey such mandates, 1261, 1.
if he issued any attachments against prelates, they were to admonish him to revoke them ; if the attachments were executed, the officers were to be censured, their lands laid under interdict : so must the king's lands, first within the diocese, then throughout the province, if he did not revoke his mandates, ibid.
he was to be excommunicated by implication, 1261, 4.
his prerogative to use clerks in secular jurisdiction, 1268, 6.
kings frequently accepted from the pope grants of tenths on clergy, 1298, Pf.
no one to be excommunicated at his command, 1343, 1.
nobility and kingdom, to be prayed for, 1359.
*Kiss* of peace, or of the *pax*, (an instrument of superstition,) 1236, 4, 32.
*Knight* Templars and Hospitallers regulated as to their impropriations, 1200, 14.
[*Kniple*, a knife, 1342, 2, note †.]

## L.

*Lammas*, St. Peter *ad vincula*, *Gula Petri*, 1416, 1, [note.]
*Lands* of Church, charged with arms by the Conqueror, 1070, Pf.
*Lapse*, from bishop to chapter, from chapter to bishop, then to archbishop, 1195, Ps.
to archbishop and pope reserved, 1279, 1.
*Laymen*, excommunicated for not appearing at the third summons, 1076, 4.
and when they submit, to pay for contempt, ibid.
sodomites uncapable of promotion, 1102, 28.
their donation of benefices and tithes forbid, 1138, 5 ; null, 1126, 4.
not to be accused in ecclesiastical court but by certain witnesses, 1164, 6.
the bishops personally to hear their causes, ibid.
not to be censured, till the sheriff had first tried to bring them to satisfaction, 1164, 10.

*Laymen*, forbid to farm ecclesiastical benefices, 1175, 10 ; 1237, 8.
and even to be partners with the clerk that farmed them, 1195, 16.
might baptize in extremity, 1200, 3.
how to do it, 1223, 1.
what to be added by the priest, 1236, 12.
their baptism how examined, 1236, 11.
without land, not to testify against clerks for breach of faith, 1261, 6.
being executor, must renounce temporal courts, 1268, 14.
apt to mistake in the form of baptism, 1279, 4.
forbid to intercept offerings, 1328, 7 ; 1343, 6.
not to alienate possessions of church without the bishop, 1330, 7.
censured for indicting ecclesiastical officers for extortion, and disturbing ecclesiastical jurisdiction, 1343, 13.
could have no places in ecclesiastical court by canon, but in fact had them, 1415, 2.
*Legacy*, principal, custom to be observed in it, 1250, 2. See Mortuary.
*Legate* of the pope, several sorts of them, 1237. Pf. Lat.
Hermenfride, John and Peter, do execution upon prelates to please the Conqueror, 1070, Pf.
John de Cremona, to give a pattern of chastity to English prelates, 1126, Pf.
Alberic of Ostia, 1138, Pf.
Albertus and Theodine, to give penance to King Henry II., 1164, Ps.
Otho, against the will of great men, bishops and clergy, to please King Henry III., 1237, Pf.
Othobon, who consented the king should have tenths of the clergy, 1268; 1298, Pf.
as did likewise Rustandus, 1298, Pf.
Petrus Rubeus came to levy money for the pope, ibid.
Hugo the cardinal, to pacify the two archbishops, 1175, Ps.
W. Corboyl, archbishop of Canterbury, the first English legate, 1126, Pf.
Henry of Winchester, by his legateship had power over both provinces, 1143.
*Legatine* decrees had perpetual force, 1237, Pf.
Hubert Walter, archbishop of Canterbury, was legate, not *legatus natus*, 1195, Pf. and 9.
*Lent*, the time for confession, 1378, 3.
and for solemn penance, 1281, 7.
not kept strictly here, 1378, 4.
*Leo* X., pope, his character, 1519.
*Lepers* might build a church, and have a priest for themselves, and were to pay no tithes for garden or cattle, 1200, 13.
*Licence* of bishop for priest to perform divine offices in the diocese, to be given gratis, 1200, 8.
for schoolmaster, to be given gratis, ibid.
necessary to qualify a strange priest to officiate in the diocese, 1322, 1.

*Licence*, for private marriage, and perhaps without previous banns, 1328, 8.
several licences relating to marriage mentioned, yet none for marrying without banns, 1343, 11; yet see 1347, 7.
to celebrate in unconsecrated chapels null, except ———, 1342, 1.
to marry in another church grantable by curate, 1343, 11.
to preach, to be granted and drawn gratis, 1408, 1.
[*Lincoln*, bishops of, patrons of St. Oswald's, Gloucester, and of Selby, 1175, Ps. *Addenda.*]
*Liveries.* See Corrodies.
[*Lollards.* See Heresy.]
*London*, the precedence of the bishop thereof, 1075, 1.
bishop thereof dean of the province, 1261, 1.
and as such to go to the king (if the archbishop cannot) to admonish him to revoke unwelcome mandates, ibid.
and to him the archbishop sent his mandate for publishing constitutions, 1298, Pf. Lat.; 1351, Pf. Lat.; 1359, Pf. Lat.; 1362, 3; 1378, Pf. Lat.; 1408, Ps. Lat.; 1415, Pf. Lat.; 1416, Pf. Lat.; 1434, Pf. Lat.; 1454, Pf. Lat.; 1463, Pf. Lat.
there is one instance of the bishop of London's answer to the archbishop's mandate, viz., 1391.
*Lord's* day, strictly to be observed, courts and markets then forbid, 1359.
from Saturday vespers to Sundays, 1359, 1362, 3. See Feasts.
*Lords* temporal, did much obstruct ecclesiastical jurisdiction, especially in point of wills, which they claimed as belonging to their own courts, 1343, 12.

## M.

*Magna Charta*, to be put up in every cathedral and collegiate church, and to be renewed every Easter, 1279, 3; 1298, Pf. Lat.
[violators of it excommunicated, ibid., and 1343, 1, *Addenda.*]
*Marriage* alone excuses the guilt of the mixture of man with woman, 1378, 2.
this often to be inculcated on the people, ibid.
in what degree forbid, 1075, 6; 1102, 24; 1126, 16.
without priest's benediction called fornication, 1076, 5.
forbid to priests, excepting those in vills already married, 1076, 1.
forbid to subdeacon, and all above him, 1102, 4; 1175, 1.
contracts of marriage without witnesses null, 1102, 22.
public only allowed, 1175, 17; 1200, 11.
consent of both parties after they are of age necessary, 1175, 18; 1236, 30.
not dissolved by parents' baptizing their own children, 1200, 3.
no fee to be paid for benediction, 1200, 8.

*Marriage*, not to be contracted between persons naturally or spiritually akin, 1200, 11.
separable, that parties might enter into religion, 1236, 27.
lawful, not to be obstructed, 1268, 13.
cognizance of marriage, dower, and bastardy, claimed as peculiar to ecclesiastical jurisdiction, between 1308 and 1322, No. 5.
how to be solemnized, 1322, 7.
clandestine, what so esteemed, 1343, 11 ; 1347, 7.
he that had been twice married, irregular: he who had several concubines not so, 1415.
the married clerk's goods went not to wife and children, but to his church, 1237, 15. See Spousals.
*Martin Luther*, his preaching against indulgences, 1519.
*Mary*, Blessed Virgin, a preface inserted in the mass in honour to her, 1175, 14.
her conception festivally celebrated, 1328, 2. See Feasts.
*Mass*, not to be celebrated in a church till consecrated, 1071, 8.
[this allowed by licence in certain cases, 1342, 1.]
no bell to be tolled during the secret of mass, 1071, 10.
how many prefaces in it, 1175, 14.
not to be enjoined in penance, 1195, 4 ; 1200, 4 ; 1378, 3.
not to be said twice a day without necessity, and then the priest to forbear drinking the washings of the cup the first time, 1200, 2 ; [1222, 6,;] 1367, 3.
when to be said twice a day, 1222, 7.
masses not to be sold, directly or indirectly, 1236, 8.
one for the dead denied to operate so much as many, 1281, 2.
not to be said till undern be ended, 1322, 5.
*Mass-priests*, such as took pay for celebrating masses for the dead, 1236, 8.
*Masters*, to teach scholars old doctrine only concerning sacraments, &c., 1408, 4.
[*Memories*, what, 1343, 10, notes c and ‡.]
*Milk*, why pretended to be tithe free in August, 1305, 6.
*Minister* of the altar, or he that tended at mass, was to be lettered, and to see that pure bread, wine, and water, were provided for mass, 1195, 1.
of archbishop to demand no fee at consecration of bishop, 1138, 3.
of bishop, what officer so called, 1127, 6.
bishop's minister was to seize priests' concubines, 1127, 7.
king's minister to bring men to ordeal in the bishop's court, 1085.
[*Misericordia*, mitigation of penance, 1072, 7, note *.]
[relaxation of monastic duties, 1222, 38, note †.]
*Monastery* not to exceed its proper number of monks, 1222, 42.
*Monks* to be duly reverenced, 1070, 13.
vagrant, not to be received into the army, or convent of clerks, 1071, 12.
they that fought for the Conqueror enjoined penance, 1072, 5.

*Monks*, called upon to keep the rule of Benedict, 1075, 2.
young ones to carry lights by night, ibid.
to have no property without licence, under pain of ——, 1075, 2; 1200, 15.
foreign, not to be received, 1075, 4.
what put them on forging charters, 1076, 6.
they that had forsaken their order to return, 1102, 11.
to receive to confession none but monks, and by abbot's licence, 1102, 18.
not to be admitted for money, 1127, 3; 1175, 8; 1200, 15.
on taking holy orders, to continue monks still, 1138, 14.
forbidden to trade or farm, 1175, 10.
one alone not to dwell in an impropriate parsonage, 1200, 15.
their habit regulated, ibid.
eighteen, the age for admitting monks, 1222, 41.
[relaxation of their duties called *Misericordia*, 1222, 48, note †.]
to become a monk, the priest's penance for disclosing confession, 1322, 9, [note.]
not to be godfathers, 1102, 19.
*Mortuary*, or principal legacy, the second best animal of the deceased to be paid to the priest, 1250, 2; 1305, 3; more largely, 1367, 1.
[*Murder*. See Homicide.]
*Musical instruments* ever used in the Church, 1305, 4.

## N.

*Names*, lascivious, not to be given to children, especially to girls, 1281, 3.
might be altered at confirmation, ibid.
*Noblemen* might have their unconsecrated chapels licensed for the celebration of mass, 1342, 1.
*Norwich* taxation, 1279, 1.
*Notaries*, public, of old not used in England, 1237, 28.
*Nun*, might not be godmother, 1102, 19.
might not be admitted for money, 1127, 3; 1175, 8.
forbid sables, and gaudy apparel, 1138, 15; 1200, 15.
forbid to go out of the house without the prioress, 1195, 15.
to make their confessions to the priest assigned by the bishop, 1222, 42.
cautioned to preserve their chastity, 1279, 11.
their conversation regulated, and novices declared to be *ipso facto* professed after a year's trial, 1281, 18.
*Nunnery*, neither clerk nor laic to come into it without just cause, 1222, 42.

O.

*Oath* [of chastity, imposed on all who were admitted to the superior orders, 1076, 1, *Addenda.*]
of calumny, what enjoined, 1237, 24.
corporeal, what, 1305, 5.
of residence to vicars, 1237, 10.
against simony required, 1138, 5.
not imposed of old, but where the bishop had a suspicion, 1222, 18; 1391.
that no pension was reserved, 1236, 24.
of stipendiary priest to his principal, 1305, 5.
*Obedience,* that is, any office in a religious house not to be farmed by a religious person, 1195, 14.
*Obedientials,* they who enjoyed such places.
to yield up annual accounts of their administration, 1222, 35.
they might farm manors of their own houses, 1222, 46.
*Oblation* not to be made for monks dying with a concealed property, 1200, 15.
*Oferhyrness,* 1076, 4.
*Offerings.* See Laymen, Tithes, &c.
*Official,* a judge ecclesiastical, substituted by bishop or archdeacon to hear causes in their courts, and who ought to be, and were for the most part, in priest's orders.
the rise of them, 1164, 10 ; 1195, Pf. Lat., and Ps. Lat., 1222, 30.
not to extort fees, 1222, 3 ; nor to raise subsidies on the clergy, 1222, 25.
not to obstruct peace between litigants, 1222, 28.
to consult good lawyers in different cases, and to have each a register to preserve acts of court, 1237, 28.
distinguished from vicars general, 1343, 15.
holding their consistory, where victuals could not be had but with the incumbent, their acts nulled, 1342, 8. See Prelates.
*Oils.* See Chrism.
*Oratory,* not to be built without the bishop's licence, 1138, 12.
if not consecrated, to have no mass celebrated in it, except————, 1342, 1.
*Orders* taken for gain, or under mortal sin, not to be exercised before confession, 1236, 2, 37.
great care to be taken in conferring them, and a list of the names of the ordained, 1237, 6.
not five orders to be given at once, 1281, 5.
but sixpence to be given for letters of orders, 1342, 2.
letters of them to be shewed on coming into a new diocese, 1408, 9.
*Ordinaries.* See Prelates.
*Ordination* of clerks to be performed at set times, 1071, 4.
rules to be observed in doing it, 1322, 1.

*Ordination*, to be done without money, 1126, 1.
*Ordination*, that is, the care of a church during vacancy, and in filling it, 1237, 12.
["*To ordain*, sometimes signifies to institute, 1126, 9."]
*Organs*, musical, how ancient, 1305, 4.
*Ornament*, to be provided for all ministrations, 1195, 8.
which of them to be found by parishioners, 1250, 2 ; 1281, 27 ; 1305, 4.
*Osculatory*, the tablet kissed at mass, instead of the old kiss of peace, 1250, 1.
*Osmund*, bishop of Sarum, the use composed by him, 1416, 2.
*Oswald's, St.*, Glocester, decreed to the archbishop of York, by the legate, 1175, Ps.
*Othobon*, granted to the king three years' tenths on clergy, 1268, Pf.
his constitution against concubinary priests to be read in every synod, 1281, Pf. Lat.
and at every quarterly chapter, 1279, 3, 5.
*Outlawry* decreed in synod, 1127, 1.
*Oxford*, the privileges of that University confirmed by convocation, and the sentence of that University against beneficed clerks to be executed throughout the province, 1279, 13.
the care taken to extirpate Lollardy there, 1408, 10.

## P.

*Parish chaplains*, that is, curates, their salaries, 1347, 1 ; 1362, 1.
enabled to censure detainers of tithes, 1305, 6.
*Parish priest*, what he was, 1127, 5 ; 1362, 1.
to preach and visit sick, 1222, 10.
might not preach without licence, though perpetual curates might, 1408, 1.
might excommunicate detainers of tithes, 1223, 10 ; 1236, 35.
rectors, perhaps so called, 1237, 3 ; 1268, 1.
*Parishioners*, what ornaments and repairs to find, 1250, 1 ; 1281, 27 ; 1305, 4.
that they did this by assessment on lands, 1342, 4.
*Parsonage*, but one in one parochial church, 1222, 13 ; 1237, 12. See Church for Parsonage.
*Parsons*, all ecclesiastics that held of the king *in capite* so called, 1164, 11.
["The word at that time first used in such a sense," ibid.]
*Parsons*, that is, rectors and vicars, bound to inform against concubinary parish priests, 1236, 26.
not to farm out their benefice without bishop's consent, 1222, 49.
that is, cathedral clergy, to choose bishop in the king's presence, 1164, 12.
of the king, perhaps his chaplains, to be at the election, ibid.

*Patron* of church, lost his right by killing or wounding his clerk, 1236, 34.
recovering his right to have his clerk admitted, if the church be not filled, 1261, 2.
to lose the next turn, if he divided the benefice, 1268, 11.
vacancy by the clerk's being a pluralist to be notified to him, 1268, 29.
to have no pension from his clerk, though it were promised, 1268, 33.
*Penance* for gross crimes to be given by bishop only, 1071, 11.
of those who fought for the Conqueror, 1072, 1—12.
["Clergyman's penance for murder, what, 1072, note d."]
["a layman's, what, ib., note e."]
and of ravishments committed by them, 1072, 12.
to be given to none but monks by monks, 1102, 18.
of forty days to priests on relinquishing their women, 1108, 9.
of such as struck ecclesiastics, reserved to pope, 1138, 10.
such to be enjoined married persons, as may not raise jealousy, 1200, 4.
not to be given for money, 1237, 4.
what arises from it, not to be farmed, 1237, 7.
not to be denied to malefactors in jail, 1261, 18.
several sorts of it. Solemn to be enjoined for murder, incest, &c., 1281, 7.
for priests disclosing confession, 1322, 9.
letters of penance to be without fee, 1363, 5.
pecuniary and corporal, 1343, 12.
*Pensions*, not to be laid on churches, 1200, 8; 1236, 24.
null, if they are simoniacal, 1268, 11.
revoked, if they be not ancient, or privileged, ibid.
*Perquisites*, what they properly were, 1305, 5.
*Philip de Broc*, the wicked canon of Bedford, 1164, Ps. Lat. [note.]
*Physician*, to make no application till he has persuaded the patient to send for the priest, 1229, 12.
*Pilgrimage* not allowed to religious, 1200, 15.
was the priest's penance for disclosing confession, 1322, 9.
to speak against it, heretical, 1408, 8.
*Pleban*, perpetual dean rural, 1363, 5.
*Pluralist* without dispensation, to be content with benefice last obtained, 1279, 1.
uncapable of promotion, penance, or salvation, ibid.
not to be admitted to another benefice till he shew his dispensation, or take oath to resign what he had before, 1268, 29.
resigning his benefices collusively, to get preferment, never to have them restored, 1268, 32.
*Pluralities* rife in England, and those without dispensation, above sixty years after council of Lateran, 1216, and eleven years after the constitution of Othobon, 1268, viz. 1279, 1.
required to be resigned under severe penalties within six months, and hopes of reformation expressed, 1281, 24.

*Pluralities*, they had so prevailed in England, that Otho durst make no decree against them, 1237, 12, 13.
*Poor*, their portion, 1268, 30.
they, and others for them, allowed to work on Good Friday, 1328, 1.
to pay nothing to ordinary for insinuation of wills, 1328, 5.
a portion to be assigned them, out of impropriations, 1342, 4.
*Pope*, Anselm's dispute with Rufus concerning the true pope, 1102, Pf.
restoring of clerks ordained by improper bishops, and of strikers of clerks claimed as peculiar to him, 1138, 10. See Reserved cases.
they who violated churches, or churchyards, to take penance from him, 1143, 1.
his decrees and canon law the cause of much evil here, 1164, Pf.
he laid a long interdict on this whole kingdom, 1222, Pf.
what irregularities could be cured by him alone, 1236, 1.
under pretence of aid for the holy war, brought the spiritualities of the Church under continual taxations, 1188, *per tot.;* 1298, Pf.
kings forced to ask their leaves to levy tenths on clergy, 1298, Pf.
sends a golden rose to King Henry VI., and for what purpose, 1446.
*Possessor* of old sent by ecclesiastical court to a disputed benefice, 1237, 28.
*Prayer*, the bidding of beads before sermon, so called, 1408, 1.
occasional, public. See Processions.
*Preachers*, that is, strolling friars, to be entertained by rectors, 1281, 11.
by law, by canon, or by privilege, who, 1408, 1.
such as were licensed by bishop, first to be examined, ibid.
the regulation of all preachers, and their sermons, 1408, 1, 3, &c.
at Paul's cross, to publish archbishop's constitutions, 1454, Ps.
*Preaching* marvellously on the crusade, 1188, Pf. Lat. and Ps. Lat.
*Prebend* not to be bought or sold, 1102, 14.
nor to descend by inheritance, 1126, 5.
the cure of prebendal churches, 1362, 2.
*Prefaces* in the mass, ten only allowed, 1175, 14.
*Prelates*, that is, bishops, abbots, deans, priors, archdeacons, or their substitutes, exercising ecclesiastical jurisdiction.
[explained by Athon, 1237, 27, note *, p. 171.]
not to impose new pensions on churches, nor to take fruits of vacant benefices to their own use, 1200, 8.
to institute and induct gratis, 1222, 3 ; and to restrain officials in fees, ibid.
nor to usurp the mesne profits not yet collected, (so it ought to be read) 1222, 4.
if there be any delay in instituting, when there is no just objection, the mesne fruits to be restored to the clerk, ibid.
to make restitution of damage done by hasty institution, 1237, 11.
not to admit sons to fathers' benefices, 1237, 17.
not to obstruct peace between litigants, 1237, 21.
if they do, to make restitution, and give doubles to the poor, 1268, 27.

*Prelates*, not to shew acts of their court to king's judges, nor to purge himself on oath from having disobeyed the king's mandates, 1261, 1.
bishop refusing to certify excommunicates, to be compelled by archbishop, 1261, 4.
imprisoned by king's judges, to be demanded by archbishop, &c., 1261, 1.
forthwith to collate to vicarages vacated by tenth of Otho, 1268, 9.
not to institute without good evidence that the church is vacant, 1268, 10.
not to apply mesne profits to their own use, without special cause or custom, 1268, 15.
to see that their own houses be well repaired, 1268, 17.
not to seize goods of intestates, 1268, 23.
to commit causes to none but dignitaries or canons of cathedral or collegiate churches, 1268, 24.
to put their seal to no proxy but at request of principal, 1281, 13.
making clandestine inquest to satisfy for damages, 1281, 14.
to substitute no bigamous or married clerk, nor layman, 1415, 2.
to take nothing for insinuation of a poor man's will, 1328, 5.
to assign fees to their ministers, 1342, 2.
to pay the doubles of a third commutation accepted from the same man, 1342, 10.
admitting presentees (so it should be read) into the place of present possessors, censured, 1342, 13.
to enquire into the apparel of clerks, 1343, 2.
to beware of insufficient substitutes, 1347, 6. See Officials.
*Presentation*, within what time to be made, 1222, 5.
*President*, the principal priest belonging to any church, 1305, 5.
the same with ordinary or judge ecclesiastical, 1308.
*Priest* to invite laymen to penance, 1070, 7.
in vills or castles might retain their wives, 1076, 1.
yet none to be ordained without professing chastity, ibid.
if incontinent, his mass not to be heard, 1102, 5.
their sons not to succeed them in their churches, 1102, 7.
not to drink to pegs, 1102, 9.
clothes to be of one colour, their shoes plain, 1102, 10.
that they who served impropriate churches might not want, 1102, 21.
not to be losers by corpse being buried in another parish, 1102, 25.
to have no familiar conversation with women, 1108, 1—10; 1126, 13; 1127, 5.
to make his purgation by six, the deacon by four, 1108, 4.
to have vicars to officiate for them during penance, 1108, 9.
forfeited their goods for incontinency, 1108, 10.
lost their honour if ordained without title, 1126, 8.
anathematized if they become sheriffs, &c., 1175, 3.
none to be married without his benediction, 1175, 17.
how to carry the host to the sick, 1195, 2.

*Priest*, not to enjoin masses in penance, 1195, 4.
not to bargain for masses, but be content with offerings, ibid.
to give baptism and eucharist to sick without delay, 1195, 6.
not to go to taverns, nor publicly keep concubines, 1195, 18.
to be very exact in pronouncing, especially the canon of mass, 1195, 1.
not to celebrate after a lapse, before they confessed, 1200, 4; 1322, 5.
ordained without title, to be kept by bishop, 1200, 6.
had power to censure and absolve detainers of tithes, 1200, 9; 1223, 10; 1236, 35.
none to be instituted in poor churches but who would personally serve them, 1200, 10; 1222, 15.
two or three required in every large church, 1222, 17.
they were the proper ministers of baptism and penance, 1223, 1.
how to treat such as came to confession, 1236, 16.
not to make their wills by a lay hand, 1236, 29.
not to kiss their host before he received it, 1236, 32.
at hour of death might absolve in reserved cases, but how, 1236, 16.
to have a clean cloth near the altar to wipe his fingers, 1236, 32.
upon ordination, to be examined chiefly concerning sacraments, 1237, 2.
to explain form of baptism to the people, 1237, 3.
and beneficed clerk never to accept jurisdiction from secular men, 1268, 6.
to say such a mass for deceased bishop, 1279, 8; 1281, 26.
not to communicate another's parishioner, 1281, 1.
not to rebaptize those baptized by laymen, 1281, 3.
unknown, how to be admitted to officiate, 1322, 1.
to admonish parents to carry their children to be confirmed, &c., 1322, 2.
their care about the altar and reserved host, and carrying it to the sick, 1322, 4; 1362, 1.
their care about banns and matrimony, 1322, 7.
not to be present at matrimony clandestine or without banns, 1328, 8.
when he came to officiate in a new diocese to give a penny to archdeacon to enter him into his matricula, 1342, 12.
censured for marrying privately, or suspected persons, not parishioners, 1343, 11; or being present at such marriage, 1347, 7.
not to give above six marks a year to chaplain, 1347, 1.
censure or process was to follow him on change of diocese, 1362, 2.
to make no abatement or commutation of penance enjoined by superior, 1363, 5.
deemed fornicators if they do not remind people that all mixture of man and woman without marriage is mortal sin, 1378, 2.
ignorance of priests still remained a hundred and sixty-five years after Peckham, 1466, 1.
stipendiary, called also chaplains, not to share in the oblations, especially not those made on occasion of a dead corpse present, to assist at singing hours in chancel, nor begin their private mass till after

the gospel of high mass be ended, and to take an oath to observe this, 1305, 5.

*Priest*, forbid to choose chantries and soul masses rather than curacies, 1362, 1; 1347, 1.

chantry priest allowed but five marks a year, curate six, 1362, 1.

six marks allowed to each, 1347, 1.

the chantry priest seven marks, the curate eight, 1378, 1.

*Priors*, that is, the heads of lesser monasteries which had not abbots, the priest next the abbot in greater monasteries, or next the bishop in cathedral monasteries where the bishop performed the part of abbot.

for what they may be removed, 1200, 15.

*Priory*, a lesser monastery, none to govern it but a priest, 1126, 7.

*Prisons*, every bishop to have one or more for criminous clerks, 1261, 21.

how clerks were to be kept there, 1351.

*Probatory term*, time allowed by judge for producing witnesses, 1237, 24.

*Processions*, for king, &c., enjoined by archbishop in convocation, 1298, 5, ["by Islep, 1359."]

again, on the morrow after the octaves of Pentecost, on Lord's days, feasts, Wednesdays and Fridays, 1268, 35; 1454.

*Proctors*, of cathedral and parochial clergy in convocation, 1279, 12, [note]; 1298, Pf. Lat.

agents in courts ecclesiastical, how to be constituted, 1237, 25.

of intruding clerk to be treated as principal, 1261, 3.

pretending to be themselves principals to be excluded from all legal acts, 1281, 13.

*Procuration*, that is, entertainment to the prelate who makes a local visitation or does any ecclesiastical office.

due to visitor only when he visits, 1200, 5; 1268, 18.

but one to be paid for one church, 1222, 16.

to be moderate according to canon without extortion, 1222, 22, 23; 1237, 20; 1268, 18.

might be paid in money and the composition settled, 1336.

paid to pope's legate by the clergy.

canonical, due to bishop on consecrating a church, 1138, 3.

to the archdeacon or his official for induction, 1342, 3.

*Procurations*, claimed by apparitors, 1261, 19; 1268, 18.

*Prohibitions*, sent from king's court to ecclesiastical synods or courts to prevent the mischief of pope's canon law.

Hubert Walter, archbishop of Canterbury, held synod in opposition to this, 1200, Pf. Lat.

how prelates were to oppose these prohibitions, particularly in case of faith or covenant broken, 1261, 3.

*Proxies*, not to be granted but by principals certainly known, 1281, 13.

*Publications* in churches. See Excommunications general.

excommunications against sodomites every Lord's day, 1102, 28.

against auncel weight, 1430.

the spiritual relation of sponsors, &c., 1322, 2.

*Publications*, women to be cautioned every Lord's day against overlaying their children, 1236, 15.
excommunications against false swearers every Lord's day, 1195, 17.
the danger of patron's killing his clerk, 1236, 34.
Othobon's constitution against violating sanctuaries every Lord's day, 1268, 12.
Peckham's homily, &c., 1281, 9.
the duty of executors, 1343, 7.
excommunication against such as marry irregularly, 1343, 11.
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